

# An “Amazon of Living Things”? The History & Horror of Commodifying Life

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**Keywords:** Organs, Transplantation, Grave Robbing, Race, Bioethics

**Abstract:** This article argues that beneath the veneer of legitimacy in the organ, tissue, and body part transplantation systems exists a horrifying history of human commodification whose vestiges surprisingly linger in contemporary supply and allocation systems. This history, as the Article demonstrates, dates back to the colonial period in the United States, where “grave robbing” became an important feature in the advancement of medicine. This legacy lives on.

*On one hand, the law demands that the surgeon must possess the proper skill to practice his vocation, and that he be subject to monetary loss, in civil court, at the whim of a dissatisfied patient. On the other hand, the only mode of acquiring that skill is by the dissection of human bodies, which itself is a crime punishable by law.<sup>1</sup>*

— Dr. Ryno Smith circa 1830

## Introduction

Beneath the veneer of legitimacy in the organ, tissue, cellular, and body part transplantation systems exists a horrifying history of human commodification whose vestiges surprisingly linger in contemporary supply and allocation systems. As Nancy Scheper-Hughes warned decades ago, “organ transactions today are a blend of altruism and commerce.”<sup>2</sup> As she explained, they are a mix of “sorcery,” compounded by science and even “magic.”<sup>3</sup> Her point was that organ transactions are a *mélange* “of volunteerism and coercion; of gift, barter, and theft.”<sup>4</sup> This is true of the broader organ and tissue transaction realm as analyzed in *Black Markets: The Supply and Demand of Body Parts*,<sup>5</sup> which documented the myriad challenges in the organ transplantation systems in the United States and abroad. In more recent years, the United States has launched investigations of its transplantation system, documenting failures and allegations of fraud in its procurement and transplant systems, exposing the “serious deficiencies in the nationwide organ transplant system.”<sup>6</sup>

However, the challenges of contemporary organ transplantation are not limited to the serious concerns

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of inadequate supply and significant demand for life-saving organs or the procurement organizations' "government-guaranteed monopoly over a swath of U.S. territory."<sup>7</sup> Rather, urgent human rights and criminal law concerns now emerge in the broader scale and scope of tissue and organ transplantation systems, including investigations involving the equivalent of contemporary grave robbing, the execution of prisoners for organs, international human trafficking rings, and black markets, to name only a few of the legal challenges.<sup>8</sup> Much transpires through underground, nefarious networks that reach across the globe.

body parts on Facebook to a group known as the "Oddities," which promised its clandestine, underground dealings were "a safe way to shop."<sup>11</sup> Law enforcement charged Scott with "interstate transportation of stolen property," a dozen counts of mail fraud, and wire fraud.<sup>12</sup>

Only weeks before, three families sued Harvard Medical School, accusing it of desecrating their loved ones' bodies. In their legal filing, they asserted that the medical school was a "place of freakish desecration" where they claimed the bodies were bartered over "like trinkets at a flea market."<sup>13</sup> According to the indict-

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Because of these underlying, systemic challenges in existing organ transplant procurement, exploration of future possibilities, including transplantation after cryopreservation, call for thoughtful deliberation, understanding the history of body part procurement, the impediments to a robust transplantation system, and the much-ignored legacies of human exploitation and racism that have undergirded human supply and demand. Failure to grapple with the thornier historical elements of human biological procurement may exacerbate mistrust<sup>9</sup> that persists among some American communities in any future organ and tissue cryopreservation systems. Further, ignoring existing allegations of fraud, coercion, criminal misconduct, and deception that currently entangle body part procurement may undermine future biotechnological endeavors.

Consider the cascade of horrors, illicit schemes, and criminal conduct in recent years. In the early summer of 2023, Candace Chapman Scott, a 36-year-old woman from Arkansas, pled not guilty to selling nearly two dozen crates of illicitly obtained human body parts.<sup>10</sup> Scott, a former mortuary services employee, pilfered skulls, skin, and other remains from the University of Arkansas Medical School. Later, she sold the

ment, a "theft ring" in the school's morgue became a euphemistic chop shop, where the morgue's manager, Cedric Lodge and his wife, Denise, along with other associates, bartered and sold body parts. In a report by *Business Insider*, Michelle Mark noted that "ultimately, up to 400 cadavers could have been used in [the] human remains trafficking scheme..."<sup>14</sup> Among the documents recovered by investigators were financial records, "including one \$1,000 payment labeled 'head number 7' and a \$200 payment described as 'braiiiiiiins.'"<sup>15</sup>

In what could be described as a literal "shop of horrors," prosecutors referenced "Kat's Creepy Creations," a "studio and store," as being affiliated with the body part thefts. According to the federal indictment, for nearly five years, between 2018 and 2023, the defendants "knowingly, intentionally, and willfully conspired, combined, confederated, and agreed ... to unlawfully transport, transmit, and transfer, and cause to be transported, transmitted, and transferred in interstate commerce from Boston, Massachusetts to New Hampshire and Pennsylvania, stolen goods, wares and merchandise, that is human remains..."<sup>16</sup> Despite federal, criminal charges against Mr. Lodge, Denise Lodge, Katrina Maclean (owner of Kat's Creepy

Creations), and Joshua Taylor, alleging conspiracy, fraud, and other crimes, their prosecution and potential convictions may never repair the harms endured by family members of the deceased or damage to broader trust in the cadaveric donation system.<sup>17</sup>

Sadly, these shops of horror are neither new nor limited to medical schools. In 2014, FBI agents raided “a now-defunct Arizona body donation company,” leading to a “gruesome scene, including remains from different bodies sewn together in a ‘Frankenstein’ manner.”<sup>18</sup> They discovered “buckets full of limbs,” heads, and other body parts, which they described as “mis-handled, abused, desecrated and sold for profit.”<sup>19</sup> The company, Biological Resource Center Inc., obtained bodies and parts under the guise of “medical and scientific” donation for research. In reality, the company’s owners, along with staff and coconspirators, desecrated the donations, deceiving relatives of the deceased. For example, family members “were told, ‘the donations, if accepted, would be used solely for medical and/or scientific research ... that donor bodies would be treated with dignity and respect; and that donor bodies would not be dismembered and/or sold...’”<sup>20</sup>

In a lawsuit filed by thirty families, they noted that “the defendants’ acts were so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency...”<sup>21</sup> Mark Cwynar, a former FBI assistant special agent, testified that what he observed in the agency’s raid of the company was “unsettling,” including witnessing commingled “body parts piled on top of each other throughout the facility,” stripped of any “apparent identification to indicate what bodies they came from or to whom they belonged.”<sup>22</sup> Body parts were scattered — an arm here, leg there, and heads randomly sewn to bodies. Coolers and buckets, rather than urns and caskets, became the last resting places for dismembered cadavers. In one particular bucket, according to the FBI, the defendants collected an assorted pile of penises. Torsos were stripped of limbs, and genitalia castrated. Some parts were frozen and found in disarray within a freezer.

The body bazaar business spans myriad sectors, infecting and influencing human biological commerce. Across the world, as technology advances, perverse incentives emerge in human research, transplantation, and adjacent fields and areas. For example, in 2020, prosecutors indicted Shirley Koch, age 66 and Megan Hess, age 43 — a Colorado mother and her daughter — who operated Sunset Mesa Funeral Home in Montrose, Colorado. Their crimes? The two were charged with mail fraud, illegal transportation of hazardous materials, unauthorized dismemberment

of bodies, and “donating” body parts without consent. The grand jury indictment alleged that their scheme spanned eight years, from 2010–2018. According to the press release issued by the U.S. Attorney’s Office for the District of Colorado in 2020, grieving families were “charge[d] \$1,000 or more for cremations, but many never occurred.”<sup>23</sup> Instead, Hess “created a non-profit called Sunset Mesa Funeral Foundation...a body broker service operated out of the same location.”<sup>24</sup> In at least a dozen instances, the two deceived families as they trafficked and sold body parts to organizations purportedly for research and educational purposes.<sup>25</sup> Koch and Hess were sentenced to 15 and 20 years, respectively, in federal prison. The latter “was the maximum allowed under law.”<sup>26</sup>

These reports and others shed light on a blight of conspiracies — facilitated by organized crime syndicates (or mafias, if you will) in the human transplantation and cadaveric research spheres — one in which bribes, under-the-table payments, middlemen, henchmen, and shadowy characters operate not only in the underground, but also connect to legitimate enterprises such as medical schools, research centers, funeral homes, crematoriums, and corporations. Despite a more refined vision of organ procurement, global investigations shed light on and provide a compelling framework for understanding these systems as they exist: “organ mafia,” “criminal gangs,” and “human organ and arms ring[s],” which may be notably different than how the lay public and even academic scholars understand these systems.<sup>27</sup> For example, in southern India, a news publication queried, *How Criminal Gangs Make A Killing From Organ Transplant*.<sup>28</sup> In Nigeria, a politician, his wife and medical middleman were found guilty of an organ-trafficking plot after they brought a man to the UK from Lagos to sell his kidney.<sup>29</sup> In 2020, in a detailed investigation published in *Financial Crime News*, Steve Farrer reported that the darker side of organ procurement and transplantation generates upward of “USD\$1.7 billion annually.”<sup>30</sup> Indeed, it is easier than one might realize to obtain black market body parts.

In 2017, the news organization *Reuters* reported that one of its journalists was able to purchase body parts on the black market. In what they described as a donor’s “heart-wrenching story,” after “a few emails, a body broker sold reporter Brian Grow two heads and a cervical spine.”<sup>31</sup> According to the article, “the spine came from a young man whose parents were too poor to bury him.” The parents told *Reuters*, “they never knew his body would be sold.”<sup>32</sup>

Today, lawsuits read as dystopian novels with defendants that rival the sinister antagonists of the past and

their contemporary deeds as ghoulish, if not more, than anything ever imagined or written before. The trail of horrors in tissue, organ, and body part commodification spans the globe. In the last decade, with more controversies spilling forward, what becomes clear is that with the ever-increasing demands for human biologics, legal systems are faltering, leaving gaps in monitoring what have essentially become supply chains. Legal scrutiny and enforcements against dangerous black market body part transactions lag behind. As such, this veritable Amazon of living and recently deceased “things” begs important questions for health and science, innovations and technology, and bioethics and law.

Rather than episodic and isolated, the aforementioned cases reflect an open secret in the black market of human things. On one hand, they could be described as exposing unfettered greed, fraud, and a disregard for that which most societies find sacred — the dead.<sup>33</sup> On the other hand, and more to the point of this article, the clandestine markets in human body parts expose other dynamics in American health care and tell three important stories. The first is a story about supply and demand. The tremendous demand for human biologics now spills from systems perceived as transparent, trusted, and regulated to those that are underground and murky. Yet, this raises a critical question: *Would there be an underground supply system if not for demand?* The second story is about technology outpacing law. Simply put, law and law-making lag behind innovation, constantly playing “catch-up.” Third, these cases shed light on how deeply intertwined the underground, black markets in human body parts are to systems upon which people rely.

This article’s contribution to an important collection of scholarship on disruptive future technologies involving advanced biopreservation and cryopreservation<sup>34</sup> resides in unearthing the past to inform future developments in medical technologies that inevitably rely on the human body as a source for medical investigation, experimentation, and knowledge-seeking. The shifting American legal landscape and legal chaos with regard to human biologics, including reproductive biologics, underscores the relevance of this symposium and highlights the future roles that courts and legislature may play in the realm of human cryopreservation. In 2024, the Alabama Supreme Court ruled that cryopreserved embryos are children and that their demise or destruction amounts to wrongful death under state law, although immediately thereafter that state’s legislature granted criminal and civil immunity to IVF clinics.<sup>35</sup> These matters are not

under debate in other US states. As such, on one hand, technologies and innovations often outpace law. On the other hand, lawmakers and judges that govern, regulate, and handle disputes related to technologies may become vulnerable to political whims.

Building from prior scholarship, Part I generalizes my query. It examines the historic shop of horrors, exposing grave robbing as a nefarious open secret of early American medical education.<sup>36</sup> Tunneling more deeply into the past with a focus on social justice, Part II turns to American medicine’s long-forgotten racial secret. As competition for medical school enrollments intensified, schools of anatomy (predecessors to contemporary medical schools) promised applicants access to cadavers upon which they could explore the human anatomy. The result was a grave robbing industry that frequently preyed on African American burial sites, homeless people, the destitute, and the vulnerable. According to Kercheval, “slavery gave Southern schools an edge in procuring bodies — masters could sell them — which schools used as a recruiting tool.”<sup>37</sup> Part III forecasts future challenges in human body commodification.

### **Part I. The Body Bazaar: Grave Robbing and The Rise of American Medicine**

The search for body parts in the shadows of law can be traced back to early medicine in the United States. Indeed, early American medical education relied on a blend of innovation and determination, as well as deviance and pathology. The medical school model emerged from schools of anatomy. Medical scientists and researchers sought to understand and master human anatomy — to diagram and dissect human remains. They strove to understand human matter — brains, blood, bones, skin, muscles, and organs — how they operated and their relation to each other.<sup>38</sup> Surgical dissections of cadavers paved the way for understanding how the human body functions. And patients wanted competent physicians. As Emily Bazelon has observed, “[p]atients wanted to be treated by doctors who understood the body’s inner workings, which could be learned only by studying a human corpse.”<sup>39</sup>

Thus, in the 1700s and 1800s, doctors urged political institutions both abroad and in the United States to draft and enact legislation legalizing the procurement of unclaimed bodies for use in medical science.<sup>40</sup> This would address — at least in part — a supply and demand enigma for medical schools. The bodies, they argued, would otherwise become a burden to the state — an added expense in burying the destitute who had no relatives to claim them. At the time, the one reliable institution for acquiring cadavers — prisons — pro-



duced an inadequate supply. Too few men were being put to death in comparison to the growth of American medical schools and their increasing demand for cadavers in medical training. The limited supply offered through condemned murderers could not adequately meet medical research and training demand.<sup>41</sup> Grave robbing became a vehicle for addressing the increasing demand for human cadavers in medical school.

Illegally unearthing cadavers became an important cog in the development of modern anatomical studies in Europe and the United States.<sup>42</sup> Despite its risks and illegality, grave robbing could be justified as rarely — if ever — involving murder. As noted in prior works, previously buried bodies were “resurrected” and sold to medical students, hospitals, and doctors.<sup>43</sup> Reasonably enough, deans of medical schools and professors preferred their students to study anatomy on human cadavers rather than on dead animals or diagrams. Indeed, this became a point of competition among medical schools — sparking demand for human cadavers as part of medical training. Schools placed advertisements promising eager applicants that they would be guaranteed access to a human cadaver on which to study. The general opinion seemed to be that anatomists simply did not possess a sufficient supply of bodies to study.<sup>44</sup> The answer to this problem was grave robbing.

Intense demand from medical institutions, and their willingness to provide compensation, inspired both the reluctant donor (usually a prisoner soon to be executed) and creative entrepreneurs to participate in the procurement process.<sup>45</sup> As a result, anatomical studies flourished. Nevertheless, pillaging graves for the purpose of advancing medical studies illuminated a moral tension between medical inquiry and ethics, namely the deepening concern and challenge to reconcile medical advancement with preserving the human dignity of people who were in poor and Black communities — groups most likely to be targeted and exploited by grave robbers.

Throughout the 18th and 19th centuries, scientists, philosophers, clergy, and legislators debated the appropriate moral boundaries and ethical constraints of anatomical studies, particularly when grave robbing was at its height, and medical schools compensated harvesters for illegally procuring cadavers. Christian philosophers debated the viability of resurrection and “feared it would not occur if the body was anatomised.”<sup>46</sup> Consequently, some religious orders forbade human dissection.<sup>47</sup> Yet, important moral and ethical questions persisted related to ends justifying the means, and ultimately the role of medicine and

expectations of physicians. *If medical science could be advanced, and future lives saved, was grave robbing so morally wrong that it should stop?*<sup>48</sup>

Grave robbing occurred in the shadows of the law. Although illegal, pillaging graves became tacitly permitted; highly regarded, esteemed surgeons procured bodies for their medical institutions through such means and were rarely publicly censured. William Herdman, the Demonstrator of Anatomy at the University of Michigan Medical School, took on the responsibility of keeping the medical school competitive by maintaining a sufficient supply of cadavers for faculty and students.<sup>49</sup> To give some sense of the scope and scale for the university, at the time, more than half of the University of Michigan faculty was located in the medical school.<sup>50</sup> In a letter to senior leaders at the university, Herdman acknowledged grave robbing as a “clandestine business.” Indeed, it was. For example, one infamous robber would “go to the cemetery late at night, with only the moon watching ... [and] quickly dig down to the upper end of the box, smash it with an ax, reach in there with his long and powerful arms and draw the subject out. He would put the subject in a big sack, place it in a cart and carry it to the school.”<sup>51</sup>

Of the myriad matters and concerns exposed in grave robbing — and further addressed in Part II — one that stands out is the supply and demand conundrum in early American medicine. The demand for better medical knowledge and technology created procurement demands. Yet those demands could not be met by the trickling supply from convicted murderers put to death and then donated to hospitals and medical schools. In other words, medical demand created a system that was limited in its ability to competently address its needs. As a result, the institutional choices were constrained from the start, and the paths chosen were unorthodox and illegal, preying on the vulnerable and politically weak.

The failure of legislators, polices, and courts to respond to the obvious medical demand for cadavers and their illegal procurement exacerbated harms experienced by African Americans. These challenges were compounded by the complicity of medical schools in tolerating and in some instances encouraging grave robbing. These problems perpetuated reliance on a system that ultimately was morally doomed, even while other policy choices could have been pursued, including an early race- and poverty-neutral version of presumed consent, which would have eliminated discrimination between the rich and poor in body part procurement. In this way, the law’s blindness to alternative approaches in the face of abuses to African Americans had a disparate racial and discriminatory effect.

As discussed in Part II, African American communities suffered the brunt of medical demand for cadavers as their cemeteries were pillaged. Not fictively, but in reality, African American bodies were conscribed into the Amazon of living things, bartered, sold, rented, and leased in life and death. As a result, even after the abolition of slavery, African Americans were seriously affected by the failure of the law to provide alternative means for cadaver procurement and the demand by medical institutions. This lack of attention to alternatives contributed to the expansion of the black market in body parts — the secrets hidden in plain sight. Grave robbing and its various contours fed a ravenous medical system that on one hand fundamentally expanded medical knowledge, and on the other undermined the dignity and autonomy of vulnerable, African American communities throughout the United States.

## **Part II. American Medicine Experiment: Pillaging African American Graves for the Advancement of Medical Science**

One key aspect of American medical advancement and anatomical research was its reliance on African American cadavers, which predated slavery's abolition and persisted past Reconstruction.<sup>52</sup> This is what Michael Sappol referred to as *a traffic of dead bodies* — one “embodied” in American medical social identity.<sup>53</sup> That is, grave robbing was generally confined to white vagrants and African Americans. For example, at the turn of the 19th century, laws permitted only the dissection of condemned murderers.<sup>54</sup> African American bodies were an exception legally and socially, given centuries of degrading commodification in the United States. Trapped in that pernicious system, no meaningful recourse existed against commodification not only in life, but also death — even if permitted a burial.<sup>55</sup> As Kristina Killgrove explains, the pillaging of African American gravesites reified social stratification and further dehumanized Black people who already struggled against social and legal injustice and inequality.<sup>56</sup> These practices continued into the 20th century.

In New York City, “most of the bodies that ended up on dissection tables” in the late 1700s “were Black despite comprising only 15% of the city’s population.”<sup>57</sup> In Southwest Philadelphia, Lebanon Cemetery, which sheltered deceased African Americans, became the target of grave robbers who unearthed bodies for Pennsylvania Hospital and Jefferson Medical College.<sup>58</sup> Prominent anatomists like William S. Forbes, a distinguished member of the College of Physicians of Philadelphia, were implicated in contracting with grave robbers. To reduce the hurdles in access to cadavers, Pennsylvania medical schools lobbied for

the passage of the Pennsylvania Anatomy Act of 1883 — a law that permitted “unclaimed bodies from jails, hospitals, and poorhouses to be distributed to the area medical schools.”<sup>59</sup>

Grave robbing extended from northern states to those in the south with common goals and similar targets: to advance medical education through experimentation on Black bodies. By law in most southern states, enslaved people were property which could be bought, sold, bartered, rented, and traded, including to universities and medical schools. Even after death, the commodification of Black bodies persisted as plantation owners sought to maximize profit at every turn, including in collaborating with medical institutions. Consider the Medical College of Georgia — one of the nation’s earliest medical colleges. Here, “students dissected cadavers” procured by grave robbers as part of “their training.”<sup>60</sup> From 1835–1913, “freelance graverobbers — and at least one full-time employee — illegally unearthed corpses from graveyards and brought them to the school’s labs, where the bodies were preserved in whiskey before being dissected by the students.”<sup>61</sup>

In his article *The Body Snatchers of Augusta: Bought As A Slave To Rob Black Graves*, Charles Seabrook chronicles the life of Grandison Harris, the Medical College of Georgia’s most invaluable grave robber.<sup>62</sup> Harris became known as the “resurrection man,” a moniker sometimes applied to grave robbers, but which also reflected his prowess and the scale and scope of his pillaging of African American graves. Harris, first enslaved by the Georgia Medical College and “jointly owned by all seven members of the school’s medical faculty,” eventually became employed by them and worked in the medical theatre by assisting and training in dissection.<sup>63</sup> As Bess Lovejoy explained, “[f]or 50 years, doctors-in-training learned anatomy from cadavers dug up by a former slave.”<sup>64</sup>

The scale of Georgia Medical College’s demand for Black bodies is revealed in a chilling discovery in the institution’s basement:

In the late summer of 1989, construction workers renovating a 150-year-old building in Augusta, Georgia, made a disturbing discovery. Deep in the building’s dirt basement, they found layers and layers of human bones — arms and legs, torsos and skulls, and thousands of other individual bones, scattered among remnants of nineteenth century medical tools. Many of the bones showed the marks of dissection, while others had been labeled as specimens by whomever left the bodies there. All together, the workers

— and the forensic anthropology students who took over the excavation — found close to 10,000 individual human bones and bone fragments buried in the dirt.<sup>65</sup>

The Georgia Medical College was hardly alone in commodifying the dead and paying for cadavers procured illegally through grave robbing; the University of Michigan, Johns Hopkins, Harvard, Yale, Jefferson Medical College, and the Medical College of Louisiana were all participants.<sup>66</sup> Pilfered cadavers were transported from Maryland to Maine during the high point, or “Golden Age of grave robbing,” according to Kercheval.

Even though states would later permit the procurement and dissection of unclaimed white paupers, purloined African American bodies served as a vital resource for medical schools. For example, in 1890, the state of Maryland created a board of anatomy to provide bodies of “unclaimed” indigent individuals for medical use.<sup>67</sup> Seemingly race-neutral on its face, the board served as a vehicle for legitimating the procurement of dead bodies for dissection. The State’s program emerged in the wake of wide-scale, rampant grave robbing, which supplied cadavers for Johns Hopkins and the University of Maryland hospitals. Indeed, Baltimore became known as a “first-class medical school town,”<sup>68</sup> largely due to their prowess in anatomical research and dissection, which relied on bodies pillaged from cemeteries.<sup>69</sup> In fact, “the provenance of the early cadavers Hopkins acquired for dissection and distribution underscored how blacks were used [as] clinical material.”<sup>70</sup>

A circular produced by the University of Maryland extolled, “[i]t is well known that in the city of Baltimore the materials for the pursuit of Practical Anatomy are most ample, and easy of acquisition. In no city in America is public sentiment so indulgent in this respect.”<sup>71</sup> According to the university:

The Hospital department of the University, in the immediate vicinity, and nearly opposite the Medical College, from its proximity, offers advantages for Clinical studies not to be found elsewhere. Here the student can, day by day, watch the progress of disease and the operation of remedies, and become familiar with the aspect of both acute and chronic complaints — can not only witness surgical operations, but also what is equally important, the nature and result after treatment — advantages not to be obtained, where the Hospital is at a distance and visited only at long intervals.

Students flocked to Maryland as it was thought to provide the best training and technology of its time.<sup>72</sup> The pamphlet ignored the escalating public angst associated with the rise of grave robbing, which resulted in riots and the storming of the dissection rooms. What fueled the growth of medical programs in Baltimore was hidden in plain sight.

### Part III. Cautionary Tales for Future Human Body Part Demand

The dark American history of body part procurement and commodification roots deeply and in multiple directions — from a colonial Antebellum past to the emergence of medical schools and today in shops of horror. The history outlined in Parts I and II helps to inform contemporary challenges in procuring organs, tissues, and human body parts and mistrust on the part of African Americans. That is, the study of anatomy “laid bare an uncomfortable tension in 19th-century medicine.”<sup>73</sup> That uncomfortable tension is at the heart of medical innovation and the urgent need for participants in the development of technologies. Indeed, one could argue that American grave robbing persists — transformed from late-night casket busting to thefts at medical schools and biobanks.

During the period of American grave robbing, respect for the dead mattered, but clearly, advancing medical science was an important priority. Similar tensions exist today. Back then, “[p]atients wanted to be treated by doctors who understood the body’s inner workings, which could be learned only by studying a human corpse.”<sup>74</sup> Today, the realist possibilities of extending life and resolving chronic issues also drive demands for medical advancements. Yet unanswered is: what is the role of law as biotechnologies expand? Ironically, at the center of this conundrum is the law, which for a time forbade the procurement of cadavers except in the case of executed prisoners, and indirectly contributed to the robust black market in African American cadavers.

The history outlined in this article offers a cautionary tale for contemporary medicine and medical research. Desecrated African American gravesites, the bodies they stored, and the people connected to them endured the costs of advancing scientific and medical innovation. From this, however, are lessons to be learned for future applications in law and ethics. For example, the prohibition on legal cadaver commodification did not deter grave robbing. To the contrary, it likely served as an accelerant. If bans on buying unearched corpses dissuaded medical schools from participating in grave robbing, the effects are imperceptible, because the intense demand for cadavers did

not dissipate, but rather expanded. As such, one could reasonably conclude that the early failure by lawmakers to proactively address the growing demands for human body parts from medical institutions through sound policies and laws contributed to the emergence of a *private*, nefarious industry.

In other words, American grave robbing teaches an important lesson: when legitimate or legal access to body part supply is limited or constrained, private, unregulated, and unmonitored systems will emerge. The targets of these systems will inevitably be the poor and marginalized in society. Predictably, the private, underground systems will operate without transparency, and with little regard for informed consent,

dence gathered throughout the last two decades clearly shows that China[...]has found a lucrative industry in the field of organ transplantation.”<sup>77</sup> The Congressional report explains that harvesting from Chinese prisoners “began in 1979 with the issuance of a document from China’s Public Health Ministry entitled Rules Concerning the Dissection of Corpses.” Several years later, in 1984, the Chinese government issued new regulations entitled Provisions for Regulations on the Use of Dead Bodies or Organs from Condemned Criminals. According to the Subcommittee, the 1984 report “detailed instruction on the conditions and the procedures for harvesting organs from executed prisoners, including the coordination between health per-

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Organ transplantation offers an important contemporary illustration. To a dramatic degree, organ demand outpaces supply. More than half a million Americans turn to dialysis with no real hope of ever obtaining a kidney through their deeply constrained, arguably broken domestic procurement and allocation process.<sup>75</sup> Despite domestic constraints, flourishing black markets abroad offer what some Americans perceive as their last chance at survival.<sup>76</sup> But at what cost?

#### *A Brief Lesson From China*

For years, commentators and some bioethicists were seemingly in denial about the underground markets in human body parts. They dismissed the personal narratives of people of color in the global south who sold their organs. However, old congressional reports as well as at least one more recent investigation shed light on black market transactions in organs, including the abuse of prisoners for organs.

Nearly twenty-five years ago, the Congressional Subcommittee on International Operations and Human Rights, chaired by Henry Hyde, reported that “the evi-

sonnel and prison and public security officials.”

In recent years, those concerns reemerged. Chilling, dystopic stories now captured by US news media, including *PBS NewsHour*, suggest that transplant tourism in China has not receded but rather now contributes to a financially robust Chinese procurement system, which takes organs from executed prisoners on demand.<sup>78</sup> Human rights investigators, including those interviewed by *NewsHour* producers, argue that both profit-seeking as well as political animosity against incarcerated critics of the government motivate China’s interests in organ transplant tourism.<sup>79</sup> For example, “in the past, some Chinese hospitals even advertised the costs of new organs: \$98,000 to \$130,000 for a liver ... \$130,000 to \$160,000 for a heart.”<sup>80</sup>

In 2022, the Tom Lantos Human Rights Commission (TLHRC), a bipartisan body of the U.S. House of Representatives, hosted a hearing to address allegations of human organ trafficking in China. The hearing, *Forced Organ Harvesting in China: Examining The Evidence*, hosted by Representatives Christopher Smith and James P. McGovern, surfaced additional concerns and evidence of organ trafficking in China.<sup>81</sup> It highlighted recent investigations and reports of



organ trafficking in China and called for greater attention to the claims of human rights and international law violations.<sup>82</sup> According to documents presented at the hearing by an international tribunal comprised of lawyers, researchers, and physicians with headquarters in “Australia and National Committees in the UK, USA, Canada, New Zealand and Australia,” organs continue to be illegally harvested from prisoners in China — despite the presumption among some academics that these practices no longer existed. Instead, “it is alleged that in China, prisoners of conscience are killed for the purpose of removing one or more of their organs. The recipients of these harvested organs are Chinese citizens or international transplant tourists who travel to China and pay substantial sums to receive trafficked organs.”<sup>83</sup>

### *Lessons from Domestic Black Markets and Byproducts*

Black markets produce byproducts and externalities. Even while black markets of the past involved dead bodies, the future may involve cryopreserved bodies and body parts and tissues. In the United States, the overwhelming, unmet demand for human organs has expanded to include human tissues. As such, a robust commercial market for human skin, tissue, heart valves, brains, bones, and other body parts has emerged, linking body part brokers, university hospitals, and biotech firms. From California to Maine, human body part donations enter transplant and medical research systems altruistically and exit commercially. Altruistic human donations are part of a nearly *billion dollar* per year industry whose rapid expansion can even be traced on the New York Stock Exchange.<sup>84</sup> Today, an industry has emerged that capitalizes on body parts donated to medical schools or provided to funeral homes for purposes of burial and cremation. Today’s black markets rely on and exploit ignorance. Without greater caution about future innovations and technologies, the past is bound to repeat, including with regard to cryopreserved human body parts, organs, and tissues.

For example, at the University of California Los Angeles (UCLA), Henry Reid, the head of its Willed Body Program, was arrested for selling frozen body parts to medical research laboratories. Twice per week, for over six years, Reid’s collaborator, Ernest Nelson — a body parts broker — would pillage body parts donated to UCLA. Nelson dissected body parts from cadavers and sold them to his corporate clients. According to news reports, Nelson collected “knees, hands, torsos and other body parts needed by his corporate clients involved in private medical research.”<sup>85</sup>

Among Nelson’s clients was the Fortune 500 pharmaceutical giant Johnson & Johnson. Mitek, the company’s subsidiary, obtained tissue from Nelson along with various other companies. After the story came to light, UCLA’s Willed Body Program suffered tremendous reputational damage despite apologies from university officials. Family members of the deceased filed a class action lawsuit, and reporters from across the globe investigated the allegations.<sup>86</sup>

However, UCLA was simply the canary in the coal mine. Other medical schools, university hospitals, and organ procurement organizations also operate in the shadows. In fact, not-for-profit cadaveric donation centers, including hospitals, are increasingly linked to for-profit, commercial tissue banks.<sup>87</sup> Transactions in the tissue processing industry are also concerning and, in some instances, even criminal — when detected.<sup>88</sup> Because of a lack of regulation and limited oversight, combined with perverse financial incentives to capture as much human tissue as possible without much regard for transparency, the industry is vulnerable to corruption and problematic practices.<sup>89</sup> An investigation by the International Consortium of Investigative Journalists (ICIJ), *Skin and Bone*, found a “trail of questions [and] corruption” in the tissue supply industry, where law enforcement authorities in “Hungary, Ukraine and U.S. allege that tissue suppliers stole tissue and committed fraud and forgery in the drive to supply the industry with flesh and bone.”<sup>90</sup> In a series of copiously documented installments, reporters traced cadavers, brokers, purchasers, lies, and forged documents. In “the United States’ vast tissue-donation system ... skin, bones, and other parts” are “destined for use in the manufacturing of cutting-edge medical products,” but consent may be more illusory than real.<sup>91</sup>

Indeed, a consistent theme among various investigations is the brazen conduct of those in the industry. In another investigative report, “a representative of LifeCell, a company that bought skin, would show up at staff meetings and hand out certificates for the technician who got the most square feet of skin off one donor.”<sup>92</sup> Despite the vast number of tissue products transplanted each year in American patients — around “1.5 million,”<sup>93</sup> generally, these matters receive little attention in mainstream health law discourse. Financial transactions in that industry are protected by a loophole in the National Organ Transplantation Act (NOTA), which provides for reasonable fees to be used in the transporting and processing of human body parts.<sup>94</sup>

Today, the Food & Drug Administration reports that hundreds of private companies that process

human body parts operate in the United States.<sup>95</sup> Clearly, the massive scale of registered biobanks reveals a massive scale of human tissues in the stream of commerce. However, an urgent question remains: from where are the body parts procured? Where will they be procured in the future? Failure to aggressively monitor and regulate in this area has already produced problematic consequences. When diseased and defective body parts enter the stream of commerce, what is the recourse? How should courts respond? What are the criminal and civil frameworks to address such matters? How are courts to be guided in adjudicating cases of harm? Does a family have standing to sue for misappropriation of a body or part that the deceased or family has donated? Are the purchasers of products made from diseased human body parts, such as knees, tendons, and heart valves disadvantaged in that tort law regimes have no special carve outs for human body part theft and recovery for body part breach of warranty? What will be the new safeguards for tissues and organs subject to advanced biopreservation, particularly considering the length of time that materials may one day be biopreserved and stored, including beyond one person's lifetime? At that point, the family members may be dead.

## Conclusion

To be sure, the enhancements to health and well-being in recent years through increased tissue and organ transplantation cannot be ignored. Reprocessing human bones to create knees, heart valves, and replace bones destroyed by cancer has enhanced the quality of life for hundreds of thousands of people each year and organ transplantation has saved lives. But what information, consideration, and mutual bargaining power are owed to donors?

The body bazaar in all living, deceased, and one day biopreserved body parts — which by definition operates in the shadows of law — poses serious questions for society and law. These transactions are difficult to monitor and police, thereby heightening the possibilities for abuse of vulnerable populations. Public health and safety are naturally jeopardized in such systems because they are unregulated and operate covertly. They may infringe on privacy and autonomy, paying little attention to those who are harmed and coerced. Nor will regulation alone answer these problems. It would be naïve to think so. To be clear, the problems associated with the body bazaars of today and the past are not a problem of financial payments alone. To the contrary, promoting transparency, enforcing consent protocols, and incorporating financial incentives that

directly reach donors rather than middlemen, trafficking gangs, and sophisticated syndicates might recalibrate organ and tissue procurement altogether.

That African American bodies, as well as those of vulnerable communities, might be targeted for demand and exploitation with future technologies is clearly possible. Given this, what steps can be taken to avoid the pitfalls of the past? How, then, can we become more forthright in our discussion about human biological supply and demand concerns? As suggested in prior works,<sup>96</sup> when prioritized attention is paid to institutional dynamics alongside social demands, alternatives become more apparent, particularly if they are already in practice. The law is *sometimes*, although clearly *not always*, best utilized in regulating and monitoring institutional alternatives rather than proscribing them and turning away when individuals choose illegal alternatives.

Demand for life-saving biological materials and illegal procurement are persistent themes in American medicine and are unlikely to be resolved until reasonable alternatives are made available. Thus, among the most pressing concerns going forward are three critical questions. First, how might communities involved in law, science, and health care preserve ethics when the demand for medical advancement and human body parts outpaces the development of law and regulations? Second, how might we properly calibrate our lexicon to address the shifting status of the human body in medical research and commodification? Third, how ought those who advance technologies build trustworthiness in systems that have historically shown little respect for human dignity?

## Acknowledgments

Preparation of this article was supported by the National Science Foundation (NSF) Engineering Research Center for Advanced Technologies for the Preservation of Biological Systems (ATP-BioSM), Award #1941543. Any opinions, findings, conclusions or recommendations expressed in this material are those of the author and do not necessarily reflect the views of NSF.

## Disclosures

The author has no relevant disclosures. All disclosure forms are on file with the Journal.

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