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A Gift That Some Cannot Give: The Ethical Significance of the Ban on Gay/Bisexual Men as Blood Donors

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"Stiffen the sinews, summon up the blood.”
(William Shakespeare)

Medical innovation coupled with an aging population is positioning health care systems in a precarious situation: increasing demand, yet stagnant supply of blood. This issue’s target article by Sass (2013) raises awareness of foreseeable shortages in transfused blood products and advances needed debate concerning the ethics of policies aimed at encouraging blood donations by the general public. Policies in North America have long upheld the “gift relationship”—altruistic acts for the greater good of society—as the exclusive and most ethical impetus for blood donation. Impending scarcity means that additional strategies to encourage blood donation are necessary.

Financial incentives are one possibility; however, Sass argues convincingly that more effective and ethical incentives would expand the societal benefits accrued from blood donation by coupling altruistic donations with the gift of state-sponsored charitable donations. To complement the arguments put forth by Sass—made in relation to the general population of blood donors—this commentary addresses ethical issues specific to a population that is currently barred from the gift relationship: men who have sex with men (MSM).

Since the 1980s, MSM have been banned from donating blood as a precautionary measure to prevent transfusion-transmitted infections, namely, transmission of HIV. The ban is lifelong and defines all members of the MSM community as high-risk for HIV infection regardless of whether they practice safe sex, live in monogamous relationships, or have risk profiles for sexually transmitted diseases equivalent to their heterosexual peers (Wainberg et al. 2010). In light of shortages in donated blood, and in light of the fact that the lifetime ban is—in today’s scientific reality—unwarranted (Behrmann and Ravitsky 2011; Galarneau 2010; Wainberg et al. 2010), we argue that any proposal to increase the blood supply in a consistent manner should also address questionable policies that unduly exclude entire communities from contributing to it.

Indeed, following decades of opposition and advocacy, several countries have recently revoked or reformed lifetime bans on MSM blood donation (i.e. replaced them with defined periods of abstinence from homosexual sex; Wainberg et al. 2010). Canada and the United States, however, still maintain the ban, which remains at the center of criticism and debate (Behrmann and Ravitsky 2011). Numerous articles—including a recent publication in this journal by Galarneau (2010)—have analyzed in depth the ethical implications of this ban; this commentary does not reiterate these well-established arguments against the lifetime ban.

Instead, the discussion herein identifies foreseeable ethical challenges that would arise if the incentives put forth by Sass became official public policy, in light of the North American restrictions on MSM blood donors. In support of Sass’s criticisms of financial “pay-for-service” incentives, we question whether replacing the “gift relationship” with a “pay-for-service” model would violate the rights of minorities who would then be barred from an opportunity for economic gain. On the other hand, we reflect upon how charitable incentives for blood donation may impact efforts to revoke the lifetime MSM ban that many perceive as an outdated and unethical policy.

INCENTIVES FOR BLOOD DONATION: RAMIFICATIONS FOR THE MSM BAN

Tentative “pay for service” transactions between donors and blood-collection agencies risk replacing the altruistic basis of blood donation with acts of self-interest, namely, monetary gain. Such a transition towards self-interest will weaken social cohesion and community values, and dissuade altruistically motivated donors. Sass’s proposal aims to circumvent these undesirable outcomes by placing donors “one step removed” from monetary transactions, by instead offering financial incentives in the form of a charitable gift.

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Though ethically sound, Sass’s argument does not assess additional challenges that either financial or charitable incentives could raise in terms of the MSM blood ban.

Consider first the gift relationship. A recent legal proceeding in Canada is a case in point. Acting out of protest, Kyle Freeman—a sexually active gay man—lied about his sexual orientation in order to bypass eligibility restrictions. He later revealed this anonymously to Canadian Blood Services (CBS) in an e-mail. CBS became embroiled in legal proceedings to identify the unknown blood donor. Upon identification, and then facing legal sanctions, Freeman countersued the blood-collection agency. He argued that the current ban on MSM blood donation is in violation of human rights protections for sexual minorities.

Following a politically charged legal hearing, in 2010 the Supreme Court of Ontario ruled in Freeman vs. Canadian Blood Services (Canadian Blood Services 2010). The ruling judges Aitken argued that a human rights claim concerning the “right to donate” is not valid. Central to the judge’s decision was the premise of the “gift relationship” between blood donors and blood-collection agencies. According to Aitken, “no Canadian has the right under the law to insist on donating blood. . . . Put simply, blood donation is a gift. A gift is freely offered, but also must be freely received, or freely declined. . . . There is no requirement under the law for CBS, or any other blood provider, to accept the gift of blood from anyone” (Canadian Blood Services 2010).

The premise that blood is a gift that may be freely declined will surely face significant challenges if donation policies replace altruism with monetary incentives. If the transaction between the “donor” and the blood-collection agency no longer resembles a gift but rather becomes a “payment for service provided,” then denying a particular group in society from partaking in such “business-like” transactions may raise significant questions in terms of unconstitutional discrimination. Instituting public policies that deny economic opportunities, in any form, to a defined group of people without solid justification may indeed constitute a human rights infringement.

Overall, Freeman’s argument could become justified if members of the MSM community—namely, those who are equivalent to their heterosexual peers in terms of risks of transfusion-transmitted infections (Wainberg et al. 2010)—are discriminated against in terms of their opportunities for monetary gain. Though financial incentives raise several ethical challenges, they could ironically provide additional justifications to reform blood donor policies that many find to be unethical. Instilling financial incentives will support legal arguments that the lifetime exclusion of gay and bisexual men from donating blood is not only a matter of public health (i.e., increasing the much-needed blood supply) but also a matter of minority rights in North America (Lake 2010; Lomaga 2007).

Would the system of charitable incentives proposed by Sass, being “one step removed” from monetary transactions, create similar challenges in terms of rights and freedoms? Or will it circumvent them? This remains a contentious question that requires further ethical and legal analysis. If framed as a mere extension of the altruistic model, as Sass suggests, it will make little difference in terms of the MSM ban and thus provide no additional impetus for changing the controversial policy. Such an incentive system could, however, be interpreted as a system in which public institutions provide members of society with access to goods and services (i.e., a charitable donation of their choice) through the donation of blood. Excluding a group, without solid justification, from having access to this good can then be framed as an infringement on their right to equal access to government services.

In this commentary we aim to call attention to the possible ethical implications of Sass’s proposal for the MSM ban. An altruistic model, while ethically preferable for numerous reasons, upholds a gift relationship that, as demonstrated by the Ontario Supreme Court ruling, can be freely declined without violation of one’s rights. It could thus be argued that this model provides grounds to maintain the status quo and indirectly “legitimizes” the MSM ban by undermining the MSM’s insistence to donate. Interestingly, the Freeman case also shows how far some members of the MSM community will go to fight the ban, break free of their imposed social exclusion, and give a gift to society in impassioned acts that adamantly strive to make them socially engaged members of society.

We argue that based on the possibility that Sass’s proposal would raise challenges in terms of rights to equal access, adopting a system of charitable incentives would provide yet another reason to address the MSM lifelong blood ban, a discriminatory and scientifically unfounded policy whose time for revocation has come.

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