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**The ethics of selling body parts:
more than mere commodification**

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Should we be allowed to sell blood, or kidneys? The standard answer is no. A broad consensus in international regulatory documents supports a ban on all forms of sale of organs and human body parts. ((WHO), 2010) This consensus has, however, been critiqued and prominent calls made for „ economic rewards to motivate blood donation“ and for regulated markets for human organs (Becker & Elias, 2014; Lacetera, Macis, & Slonim, 2013; J. Radcliffe Richards, 1996).

Opposition to selling human organs is usually based on risks of harms for vendors and buyers, the potential for exploitation in an asymmetric power relationship, and concerns regarding commodification (Wilkinson, 2012). Proponents of markets in organs argue that such concerns are weaker than they appear, and can be allayed by appropriate regulations. Moreover, banning the sale of human body parts is an obstacle to access to care for patients on transplantation lists. Were we to be allowed to sell organs or other body parts, such as blood, availability would dramatically increase and lives would be saved. If arguments in favor of a ban are weaker than we thought, it is argued, they should not in such diminished form trump the chance to save many lives by making more organs available than is currently the case.

The case in favour of regulated markets in human organs is strong and should be properly understood. In this paper, I will argue that we nevertheless have good reason to ban the sale of human organs.

The case in favor of selling body parts

Organ trade as it currently exists, largely as an illegal black market, is ugly. No one seriously defends an unfettered markets in human organs (Daar, 2006). The serious, increasingly respected, case is being made for the legalisation of selling human organs: 1) within a closed, and reciprocal, system; 2) to a public body responsible for buying at a fair price and allocating fairly; 3) at a sufficiently generous price for sales to be voluntary; and 4) with guarantees for additional requirements, such as medical care for vendors (Erin & Harris, 2003; Wilkinson, 2012). Such a market would be limited to organs „whose loss will not affect the vendor’s ability to live as he or she did prior to the sale“ (Taylor, 2002), and enforcement agencies should be efficient in applying its limits (Kishore, 2005).

There are three main arguments in favour of such a regulated market: Autonomy implies the right to do as one pleases with one’s own body, especially if this harms no third parties. Selling organs will (largely) empty transplant waiting lists for organs that can be sold, and will result in saving or extending many lives. Finally, selling organs is consistent: we pay for people to take greater risks for money with no qualms (Savulescu, 2003). In the specific case of selling blood, a further argument is that risks of attracting high-risk vendors who may have greater need of money may have been overestimated (Lacetera et al., 2013). Based on these arguments, allowing the sale of human organs should be the presumptive option unless we have good reasons to ban it (Daar, 2006; J. Radcliffe Richards, 2003).

Do we have such reasons? Many points made against selling body parts are indeed weaker than we might assume. In the following section, I will review them and examine which ones withstand scrutiny, which ones do not, and where some aspects may have been overlooked.

The case against selling body parts

Harm to vendors

On the illegal market, vendors are operated in dismal circumstances, trafficked (the value of their organs often exceeds their own value in the slave trade) and are often turned away from medical care if they develop complications. The risk of grievous harm to vendors thus seems to be a strong argument against the sale of human organs. The existence of such risks, however, actually provides a powerful argument for just the sort of regulated market proponents would allow as it would enable safeguards such as the requirement for appropriate medical care and long-term follow-up of vendors.

Under such circumstances, harm to vendors is no longer an effective argument against selling organs. We allow voluntary donation and it is not clear how paying the 'donor' would by itself add any risks to the act of allowing an organ to be surgically removed for transplantation (Matas, 2004). Nor can paying for the remaining risk be the problem, since we allow paying for risk in other circumstances.

One part of this argument may nevertheless survive: organ vendors are not just at risk of physical harm, they are at risk of reputational and psychological harm as well. This has been well documented (Scheper-Hughes, 2003), and would be more difficult to alleviate through effective regulation. While some have claimed that the stigma attached to selling organs might simply disappear if the practice were more widespread (Becker & Elias, 2014), there is no evidence to back this claim.

Decreased altruism

Selling organs replaces an altruistic voluntary donation by a sale. Would selling organs, then, reduce the amount of altruism in the world?¹ The available data seems inconclusive.

Compensations in the form of non-monetary material incentives may not have such a deleterious effect as might have been anticipated (Lacetera et al., 2013), but a “crowding-out” effect does exist with monetary compensation (Dhingra, 2013). Altruistic donation could be reduced even without reduction in altruistic motivation. If I can pay for my daughter’s kidney, perhaps I will feel less inclined to donate one to her. Indeed, I may be dissuaded from placing my own life at risk even were I to remain so inclined. The institutions of voluntary donation will also tend to encourage altruism while the institutions of organ sale will not (Singer, 1973).

On the other hand, it has been argued that risks to altruism are most concerning when there is a lot of altruism to be harmed (J. Radcliffe Richards, 2008). Questions of whether we ought to pay for organs, however, arise precisely because there isn’t all that much altruism.

In any case, a trade-off is involved here (Gillon, 1997). Were we to allow selling body parts, then, altruism may be perceptibly weakened. Proponents of organ markets argue that, in this trade-off, saving lives through increased transplantation is more important than maintaining a greater degree of altruism.²

¹ It has been argued that the possibility of selling and buying organs could lead to additional acts of altruism

² A part of this question hinges on how many lives are actually saved by the transplantation of organs which can be sold. In the specific case of kidneys, it is of course not true that one life is ‘saved’ by each transplantation since the alternative of dialysis allows a somewhat inferior but similar life expectancy. This point, however, does not make the trade-off any less real but only affects arguments as to which side we should come down on.

Instrumentalization and commodification

Purchasing an organ risks instrumentalising the vendor, and can represent a problematic commodification of human body parts. The origin of this argument is usually traced to Kant's Groundwork for the metaphysics of morals:

“In the realm of ends everything has either a price or a dignity. What has a price is such that something else can also be put in its place as its equivalent; by contrast, that which is elevated above all price, and admits of no equivalent, has a dignity.” (Kant, 1875, 2002)

Things, here, have a form of value translated as price. Persons, on the other hand, have a different form of value translated as dignity. The thrust of the argument is that we ought not to confuse them. Doing so can lead to two distinct wrongs: mistaking a person for a thing – objectification- or exchanging for money an entity that should not be - merchandization.

In attempting to avoid the wrongs of objectification and merchandization, then it seems that we must first categorise body parts – which are neither things nor persons – as either one or the other. On the standard international view, body parts are like person because they are part of persons. Objectifying them is wrong: we are untruthfully signifying that a part of a person is a thing. Merchandising them is also wrong: we are wrongly attributing a monetary value, as opposed to a dignity value, to a part of a person.

To this, there are several classic responses. The first is that a person is not the same as that person's blood or kidney. In selling body parts, no wrongful objectification *of persons* has occurred (Wilkinson, 2000). Indeed, by leaving the choice whether or not to sell to the vendor herself, we are guaranteeing against the risk that she might be considered as another person's property (Dworkin, 1994).

The second is that price is not the same as value, even for things which we agree we ought to be able to buy and sell. Therefore, a price would not convey anything like the true value of an organ either.

The third response is that although untruthfulness is wrong, it may not be sufficiently wrong to trump other concerns. Yes, we may be untruthfully conveying that a human body part is a thing and has a price, and this is wrong. But it seems exaggerated to conclude that this is wrong enough to ground a ban on selling organs *all things considered*.³

Endangering informed consent

Being paid can encourage people to accept things that are harmful for them, which they would not accept without payment, and that go against their own better judgement. If this is the main problem, however, then it is the level of risk rather than the payment that constitutes the wrong-making feature. So long as we can keep the level of risk acceptable, it seems we no longer have a problem.

This argument is sometimes explicitly limited to situations where the payout is huge relative to the vendor's life circumstances, or where these initial circumstances are severely constrained. Arguably, in both circumstances, the offer of selling an organ is difficult to refuse. Even in such circumstances, however, it is not clear that this is problematic. Offering payment for an organ constitutes an additional option relative to the ones the potential vendor would otherwise have (Dworkin, 1994). Indeed, the very reason why we consider consent endangered is because the vendor prefers this option to the others. Banning this option is, then, a strange way of protecting either the vendor's freedom or her interests.

³ Eyal, N. : personal communication

Coercion

The possibility of selling an organ is often described as coercive because potential sellers seem to have no other way out of dire circumstances. Coercion, however, requires an agent; considering the sale of human organs to represent coercion thus requires that someone manufacture the circumstances. This does exist on the illegal market: migrants can be lured into debt in exchange for illegal passage into another country and the promise of work there. Once they arrive, they are told that the job offer has fallen through. Since they must still repay their debts, they are given the -only- option of selling an organ in order to do so. Such a case fulfils the classic definition of coercion. It is, however, precisely the sort of thing that a legal markets might be designed to avoid.

There is, however, another side to coercion. What if we have a duty to alleviate poverty: would offering money for organs not really be extorting organs against something –a way out of poverty- which we ought to be giving anyway to those in such dire straits that they would sell a body part? Arguably, it would depend on what kind of duty there was in the first place, but this point would be of particular relevance in the case of state buyers, which we are considering here. If such a duty exists, a government that simultaneously has the resources to help everyone fulfill basic needs, but withholds these resources, and then offers the possibility of selling an organ in order to fulfill those same needs is manipulating the neediest (Veatch, 2003). Under such circumstances, buying human body parts is not coercive but instead represents an extortive exchange.

Exploitation and extraction

Because the possibility to sell a human organ targets the poor, it is argued that it “leads inexorably to inequity and injustice“ (Participants in the International Summit on Transplant

Tourism and Organ Trafficking, 2008). Exploitation exists when there is an unfair distribution of benefits and burdens from a transaction. To avoid it, vendors would need to be richly compensated if the benefit to the recipient is to save her life and if the risk to the vendor is significant. This, however, may be feasible in a regulated market.

Another way in which selling body parts may resemble exploitation is that it is quite unlike paying people for qualified jobs and more similar to mining them. In considering what could be wrong with buying and selling human organs, it may not be so much buying and selling themselves that constitute the problem. Rather, it could be what typically happens to what we buy and sell. Once markets and the profit motive can transform something into a monetary value, they are very effective in doing just that and transforming essentially all of it into monetary value.

This can be illustrated if we imagine the sort of circumstances where one might sell a kidney. Body parts which can be sold tend to become collateral for debt (Goyal, Mehta, Schneiderman, & Sehgal, 2002). If a person becomes indebted to the point where she needs to sell a kidney, however, it is quite likely that she was not free not to become indebted in the first place. If her circumstances have this consequence, she will predictably become indebted again, this time minus one kidney. At some point, she will default. Her lender, in turn, has no reason to stop hounding her until her resources are finished. Allowing the sale of organs has effectively increased the lender's ability to earn money from the loan. By allowing even a regulated market, the debtor's body parts have been transformed into a saleable thing. The problem here is not that it is untruthful to call it a thing. The problem is that things can be mined. If we have a good reason to limit the violence that a loan shark may inflict by allowing default instead, and unless we can show why breaking someone's leg for failing to pay is wrong, but taking her kidney is permissible, then we also have good reason to allow default before a kidney is removed.

That the option to sell an organ removes from debtors the option of defaulting at an earlier time illustrates the limits of the ‘additional option’ argument outlined above. Giving someone in this situation the option to sell an organ does provide her with an additional option, which she may truly prefer to being punished by a loan shark. The debtor, however, may actually prefer the option of defaulting earlier. These options are not mutually compatible. The defense of organ markets is based on the assumption that prospective sellers would prefer selling to defaulting. It is not obvious that this would be correct.

Qualifying the required regulations

Many of the problems outlined here could be decreased by regulations. These would require a single buyer within a closed system. Sellers need to have access to medical care and follow-up, and to be protected from stigmatization. Protection should also exist to avoid signaling, by paying money, that having a kidney extracted was no longer an act of altruism to be encouraged as such. Prices would need to be high enough to avoid the recurrence of systemic debt. Alternately, this risk would have to be avoided through a social safety net, or the sale of human organs would have to be limited specifically to avoid the use of organs as a collateral for debt. In addition, organs cannot be exchanged for the means to obtain basic goods which the seller otherwise has a right to.

Could any of these regulations work? Arguably, within a single country they might. Then, however, we would have constructed the sort of society where hardly anyone would need to sell a kidney (Hughes, 1998). The main reason in favour of an organ market would become invalidated as waiting lists might no longer decrease all that much.

On the international scene, where it is clear that many people need what money they could get from selling a kidney, hardly any of the required safeguards are applicable (Jha & Chugh,

2006). Given the absence of global governance, anything other than an unfettered market will be difficult to achieve. This is exactly what no one is advocating.

In the real world, the first –national- option may not even really exist. As long as there are relatives of residents who live in other parts of the world, the second situation will apply. This implies a further argument against allowing the sale of human organs: if specific safeguards are inapplicable, limits may require a ban.

Conclusion

A regulated market in organs might look like the perfect solution in theory. It could, however, be a perfect solution for conditions we might never realistically achieve. The case in favour of allowing the sale of human body parts is strong because arguments against it are weak or contradictory in theory. In considering such legalization we may, however, be facing a practical rather than a theoretical contradiction. If, in practice, a justifiable market in human organs still requires that some persons live in constraining circumstances without access to the range of goods they have a right to, and if the sort of regulations required to justify selling human organs would eliminate this situation, then we cannot have a justifiable market in human organs.

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