XIV—The Moral Limits of Markets: The Case of Human Kidneys

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This paper examines the morality of kidney markets through the lens of choice, inequality, and weak agency looking at the case for limiting such markets under both non-ideal and ideal circumstances. Regulating markets can go some way to addressing the problems of inequality and weak agency. The choice issue is different and this paper shows that the choice for some to sell their kidneys can have external effects on those who do not want to do so, constraining the options that are now open to them. I believe that this is the strongest argument against such markets.

Societies sometimes ban the sale of goods whose supply they actually wish to support or encourage. Examples include bans on markets in votes, children, and human organs. In the United States, sales of organs such as kidneys are currently illegal, and those needing transplants must rely on altruistic donation. From an economic perspective, an organ ban appears inefficient, since it seems likely that payments to donors would elicit greater supply, thereby reducing chronic shortages. From a libertarian perspective, a ban on organ sales is an illegitimate infringement with personal liberty. Non-libertarian proponents of a market in human organs also argue that a ban on sales is morally dubious, since lives would be saved by the increased supply.

The idea of establishing a kidney market is now attracting unprecedented levels of support among those involved in transplantation, as well as among economists and medical ethicists. This paper examines the values at stake in the debate about kidney markets, particularly those of autonomy, weak agency,¹ and inequality.

¹ "Weak agency" refers to an agent who is either ignorant of the consequences of his actions or is not directly involved in the transaction, but relies on another person to transact on his behalf (for example, children in child labour agreements, citizens in agreements between countries, etc.).
though the issue of whether or not to introduce a kidney market is a practical one, my aims in this essay are philosophical: to clarify the nature of the values at issue in the debate, and to focus in on the ways that markets in human organs differ from markets in other goods, goods such as apples, computers or pencils.

I

_Brief Background: The Status Quo Systems of Kidney Procurement._ Despite the prima facie case for organ markets just noted, kidney selling is currently illegal in every developed society in the world. The United Nations and the European Union have respectively instructed their member countries to prohibit the sale of body parts. Indeed, most of the globe’s countries have enacted legal bans of such sales, although states differ dramatically in their enforcement capacity and a black market thrives in many countries.

In the United States, people can donate their kidneys after death, or while they are alive, only out of altruism. The Uniform Anatomical Gift Act, drafted in 1984 (the same year the National Organ Transplantation Act was enacted), made it illegal for anyone to receive any payment—‘valuable consideration’—for providing an organ. Instead, those who need kidneys must rely largely on individual or social exhortation to induce people to donate. The result is that most live donations come from close relatives or intimates, with parents entrusted to make decisions about whether one child can serve as a donor for a sibling or relative. Individuals have a right to donate their kidneys to loved ones, but not a right to sell them.

Individuals also have the right _not_ to donate their organs: no society makes kidney donation mandatory. Current US law protects living persons from having their organs taken from them without their consent, even in cases in which another person’s life is at stake. If exhortation fails to secure an organ, the person needing the donation has no (legal) recourse but instead must wait his or her turn on

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2 Among undeveloped nations, only Iran presently has a legalized kidney market.

3 In _McFall v. Shimp_, a man (McFall) sought an injunction to require his cousin (Shimp) to donate bone marrow, a procedure that would have posed little risk but considerable pain. The court refused to grant the injunction, and the man subsequently died. In _Curran v. Bosco_, the Illinois Supreme Court refused to grant a non-custodial parent’s request that his own twin three-year-old children be compelled to undergo blood testing and possible bone marrow harvesting to save the life of their twelve-year-old half-brother.
the transplant list. Currently, there are long queues for obtaining a kidney. In the United States alone, there were over 50,000 Americans on the wait list for a kidney in 2003. The same year, there were 12,000 donors (Goodwin 2006, p. 40). Several thousand people die each year in the United States alone while waiting for an organ transplant; some of these people would not have died had an organ been available for them at the time that they needed it most.

II

Anti-Market Considerations. The free market has considerable appeal: freedom of contract is taken to maximize liberty, competitive markets are supposed to pay each input what it deserves—its marginal product—and markets tend to be extremely efficient mechanisms for the production and distribution of goods. Nevertheless, I think there are some reasons to be wary of jumping on the growing bandwagon for markets in kidneys. While some of these arguments turn on features of non-ideal markets in a non-ideal world, some of these arguments would hold in any world. At the very least, these arguments force us to consider whether or not the preference a person has for not selling her kidney is a preference she should have to pay a price for in the same way that she pays a price for her preference for leisure, for her refusal to sell her talent at making money, and so forth. I’ll say more about this issue in due course.

A. An Important Side Issue: Does a Market Ban Necessarily Decrease the Supply of Available Organs? In his famous study, the Gift Relationship, Richard Titmuss (1971) argued that a purely altruistic system for procuring blood is superior to a system that relies on a combination of altruistic donation plus a market. Comparing the American and British systems of procuring blood he demonstrated that a system of donated blood (the British system) is superior in

4 Or perhaps I should say lists, since in the US there is a national list as well as lists at regional transplant centres.
5 Goodwin also importantly notes that there are racial disparities in how long people have to wait for a kidney, as well as racial differences in rates of organ donation.
6 This figure also includes those who die while waiting for a heart to become available for transplant.
quality to a system that also uses purchased blood (the American system), in part because blood sellers have a reason to conceal their illnesses while altruistic blood donors do not. He also argued, to the surprise of many economists, that a system of altruistic donation for blood might be more efficient than a market system. He claimed that the introduction of blood markets ‘represses the expression of altruism [and] erodes the sense of community …’ (Titmuss 1971, p. 314). If blood is treated as a commodity with an associated price tag, then some people who would have donated when doing so bestowed the ‘gift of life’ will decline to donate. Therefore, supply would not necessarily be increased by the addition of a market; indeed, Titmuss hypothesized that the net result of introducing a market in blood in Britain might well be less blood, of inferior quality.

Why should the addition of a new choice (i.e. selling blood) to a set of existing options change any of the existing options (i.e. donating blood)—or their attractiveness to altruistic individuals? Recent work in experimental economics has provided mixed support for Titmuss’s conjecture. Bruno Frey and others have examined circumstances where ‘intrinsic motivation’ is partially destroyed when price incentives are introduced (Frey and Oberholzer-Gee 1997). An action is intrinsically motivated when it is performed simply because of the satisfaction the agent derives from performing the action. Frey found that support for building a noxious nuclear waste facility in a neighborhood actually decreased when monetary compensation to host it was offered. His study suggests that in cases where individuals are intrinsically motivated, using price incentives will not increase—but can actually decrease—levels of support for civic actions. For an intrinsically motivated agent, performing an act for money is simply not the same act when it is performed for free (Anderson 1993). The presence of monetary incentives can ‘crowd out’ a person’s intrinsic reasons for performing the given action, changing the attractiveness of the options that he faces.

Other studies point in opposite directions. A study of the commodification of carpool lanes in San Diego found that the programme’s initiation correlated with increased traffic in the express lanes, decreased traffic in the main lanes, and a significant increase in carpooling levels. That is, the introduction of a market in car-

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8 Ken Arrow (1972) raised just this question in his reaction to Titmuss’s implicit argument.
9 See also Freeman (1997).
pooling was compatible with ‘crowding in’ civic action.\textsuperscript{10} If the case studies above are illustrative, introducing a market may crowd out certain behaviours—or it may not. If introducing a market does affect intrinsic motivations, we cannot a priori predict in which direction the net effect will go. Of course, kidney markets and blood markets are different from markets in access to faster commuting. Transfers of organs and blood often involve questions of life and death, not simply convenience, and so it may well be that different motivations are invoked in those performing altruistic actions—motivations that are more likely to be vulnerable to crowding out.

Would the presence of a kidney market actually serve to reduce supply by crowding out those with altruistic motivations? Even if kidney markets drove out altruists, it is still possible that the net supply of kidneys would be increased. Maybe there are more potential extrinsically motivated donors than donors who are only, or primarily, intrinsically motivated. Furthermore, if the amount of organs procured through a market remained inadequate, increasing the price of organs would likely lead to more non-altruistic donors. Perhaps in the cases Frey and others examined, the monetary rewards were simply insufficient to motivate people (Gneezy and Rustichini 2000). Finally, it is also important to consider if there are indeed such crowding out effects on people with altruistic motivations, it is the case that all extrinsic rewards for giving up a kidney—including rewards to one’s heirs after one’s death, lifetime medical benefits, and funeral costs—would have the same crowding out effects.\textsuperscript{11}

Perhaps legalizing kidney sales decreases altruistic donation while at the same time increasing the net supply of organs, at least if the price is right (Ghods, Savaj and Khosravani 2000). Whether or not it does so is an especially relevant consideration if a person’s support or opposition to organ markets rests solely on the effects of such markets on supply. Since the economic case for organ markets does largely rest on such grounds, it is clearly relevant to whether that case is a good one. But whether or not the introduction of markets increases or decreases supply may not be decisive: some people are likely to be-

\textsuperscript{10} The author hypothesizes that the most likely explanation for the increase in carpoolers is that new drivers were attracted to carpooling by a relative monetary benefit—they felt better about getting for free what others had to pay for; see Strahilevitz (2000).

\textsuperscript{11} Thanks to Ben Hippen for the point that not all extrinsic rewards need have the same consequences for altruistic donation.
lieve that kidney selling is an exercise of individual autonomy that liberals should respect even if allowing such markets is inefficient.

B. Are Kidney Markets Really Examples of Free Exchange? A Distinction: Individual Choices versus Choice Sets. Many people would be repulsed by kidney sales even if such sales actually augment the number of kidneys available for transplant. For some of these critics, a kidney sale is objectionable because it is a paradigmatic ‘desperate exchange’, an exchange no one would ever make unless faced with no reasonable alternative. A kidney is, in the words of one critic, the ‘organ of last resort’ (Scheper-Hughes 2003, p. 1645).

In *Capitalism and Freedom*, Milton Friedman defends the market as a mechanism for ensuring mutual benefit ‘provided the transaction is bi-laterally voluntary and informed’ (Friedman 1962, p. 13; emphasis in the original). Below, I will consider the extent to which participants in kidney exchanges are likely to be informed. For now, I want to deal with the issue of desperate exchanges and the related issue of whether or not organ exchanges are voluntary.

In one sense, of course, intentional actions undertaken from a very small choice set are voluntary: the person taking a menial job at subsistence wages still makes a choice: she makes the necessary physical, mental and verbal moves to accept the job. So too are the movements ‘voluntary’ that a victim makes when he hands his wallet over to a thief. Nonetheless, many of us will think of the second action as illustrative of a clear case of coercion, and some of us will also consider the first action (taking a job at menial wages) to be coerced. This is because what leads us to view an act as coercive tends to be parasitic on our views about what entitlements an agent has.12

Call a blocked exchange of a good any rule that prevents people from exchanging that good, whether for money or for some other goal that they wish to achieve.13 Blocks on organ sales would seem to diminish a poor person’s choices by removing an element from what is already a very small choice set. And, since we allow people to alienate their kidneys for altruistic reasons, it is especially puzzling.
zling that we restrict their ability to do so for money.\(^1\) Doesn't respecting people's autonomy give them the right to decide what kind of exchanges they wish to make and the reasons for which they want to make them? Why shouldn't we permit market acts between, as Robert Nozick put it, willing capitalist adults?\(^2\)

The idea I want to explore here is that even if restrictions on kidney sales are autonomy-inhibiting from the point of view of a particular individual's choices, they may be autonomy-enhancing from the point of view of society. This is because allowing such markets as a widespread practice—as a pattern of repeated and regular exchanges backed up by laws—has effects on the nature of the choices that are available to people. While proponents of kidney markets usually focus on individual transactions within given environments, the introduction of markets can change environments (as well as alter individual preferences, capacities, and values). For example, where kidneys are viewed as potential collateral, moneylenders may acquire incentives to seek out additional borrowers as well as to change the terms of loans. Anthropologist Lawrence Cohen (2003) found that in areas of India where kidney selling was widespread, creditors placed additional pressures on those who owed them money. Cohen notes, 'In the Tamil countryside with its kidney belts, debt is primary … Operable women are vehicles for debt collateral' (Cohen 2003, p. 673; emphasis in original).

Here's my key point: if kidney selling became widespread, a poor person who did not want to sell her kidney might find it harder to obtain loans.\(^3\) Indeed, the price for debt might change—yielding higher interest rates for those who are unwilling to offer their kid-

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\(^1\) In the case of altruistic donation, our concern about desperation is presumably mitigated by the fact that the suppliers are likely to come from many economic groups and not simply from the poor. But since we are willing to let a poor person alienate her kidney for love, why not let her decide for herself whether or not she has good reasons to sell? The restriction on sales restricts the poor person's options.

\(^2\) As I mentioned, kidney sales are often acts of desperation. But, banning such markets by itself does nothing to rectify the desperate conditions that prompt such sales. If our concern with kidney markets is the desperation that is prompting the sale, it does no good to close off the sale but leave the circumstances that yielded the desperation in place. In fact, given the desperation, sellers and buyers may still resort to a black market with a host of attendant abuses, which is even more exploitative, overreaching, or extremely unfair than a legalized market would be. So, while there are some good arguments for ensuring that people have the resources necessary to meet their basic needs, respecting these arguments doesn't seem to have any clear consequences for blocking kidney markets.

\(^3\) I have made an analogous argument about child labour: the availability of child labour decreases the price of unskilled adult labour and thereby makes it harder for families to refrain from putting their children to work; see Satz (2003).
neys as collateral. These individuals would have preferred loans be available at worse terms than those they could have if they were willing to put up their kidneys, but better terms than they will find in a world where kidney selling is legal and they do not wish to sell their kidneys. If this is so, while allowing a market in kidneys expands a single individual’s set of choices, if adopted as a social practice, it may reduce or change the available choices open to others, and those others will be worse off. And they will have less effective choices in so far as they will no longer be able to find reasonable loan rates without mortgaging their organs. Once we see the effects of establishing certain market practices on the choice sets of those not party to the transaction, we can no longer say that market restrictions are necessarily autonomy-inhibiting. In fact, we cannot even say that removing such restrictions is necessarily Pareto improving!

Of course, this argument is true of other markets. Indeed, many markets generate what economists refer to as pecuniary externalities. A pecuniary externality is an effect of production or transactions on outside parties through prices and not through direct resource allocations. For example, the introduction of a market in second homes in a rural community may price some first-time buyers out of the housing market in that community. But people who find kidney markets troubling do not necessarily find markets in second homes troubling. So the point about the effect of a market on other people’s choice sets does not settle the issue. Instead, we need to ask: should people have to pay a cost for their unwillingness to sell their organs? And this, I think, brings us back to the issue of what entitlements we think an agent has.

In some theories, for example that of Amartya Sen, entitlements can be seen as the conditions that enable individuals to mobilize the resources they have as a means to becoming full members of society. Consider the minimum wage. While there are many arguments for and against a minimum wage in terms of efficiency, I want to consider a different argument: minimum wages are attempts to institutionalize

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17 It’s not clear how much individuals benefit from the sale of their organs. In an important study of kidney sales in India in the Journal of the American Medical Association (Goyal et al. 2002), 96% of sellers interviewed sold a kidney to pay off a debt. (Indebtedness is a fact of life in many of the areas where kidney selling is widespread.) 74% were still in debt at the time of the survey, six years later. In fact, this study of 505 kidney sellers in Chennai, India, found that after selling a kidney, family income actually declined. Many sellers experienced pain and were unable to work. Participants were also paid little for their organs, and often substantially less than they were promised. So even where they were able to stave off the moneylenders for a few years, they were soon in debt again.
a level of capability that a worker needs for full social inclusion. In effect, minimum wage laws require firms to adopt strategies based on enhancing the quality of labour inputs through improvements to health and safety protection, training and skills development (Deakin 2005). On this view, the restriction on voluntary exchanges (of those willing to work for below a minimum wage) can be justified by the restriction’s endogenous effects on workers’ capabilities as a group.

It is possible that a restriction on sale of body parts may also have endogenous effects on health and on health and safety protections. But the main parallel I want to draw with the minimum wage is in terms of the argument that restricting an option for individuals can sometimes expand the options open to people generally. Conversely allowing an individual to have an option—when we consider this option as a widespread practice—can change the options open to others. If we view kidneys as resources analogous to other resources we have—whether money or housing or apples—then it is unclear why a person should not have to part with that resource as a condition of access to other social opportunities, including employment and credit.18

Those who oppose kidney markets resist this analogy. According to Ronald Dworkin (1983, p. 39), for example, we have good reason to draw a ‘prophylactic line’ around the body, a line ‘that comes close to making [it] inviolate, that is, making body parts not part of social resources at all’. This is because our relationship to our body parts is so closely bound up with our ability to control what happens to us, what we can be and do. While I think there is something to this line of thought, and indeed, that a horror at the thought of conscription of our bodies by others may lie behind the repugnance people feel toward kidney markets, my endorsement of it is a bit tentative, in part because it does not take into account the person who may be dying for lack of a kidney.19 Nevertheless, I want to stress that

18 There’s a nice paper by Kaushik Basu (2003) looking at whether allowing sex to be part of a person’s job description would change the price of labour for those who do not want to have sex with their employers.

19 There’s someone who arguably pays a cost due to our ban on kidneys: the person dying for lack of one. A kidney market ban—even if we couple our ban with the transfer of resources to stave off the desperation of the poor—leaves intact the desperation of the individual dying for lack of a kidney. The desperation behind kidney markets is often symmetric: buyers are willing to pay vast sums for the opportunity to live without dialysis. When a kidney was recently offered on eBay, the bidding reached $8.5 million before being shut down by the administrators because it violated US law (cited in Seabright 2004, pp. 151–2). Additionally, we should not lose sight of the fact that the ‘gift’ of a kidney is often the result of intense pressure applied to a young person by the relative who is desperate to attain one; see Healy (2006).
whether or not this line of argument is ultimately successful, it offers a different perspective on kidney markets from one which stresses that a trade entered into out of desperation is a trade that is likely to be exploitative, overreaching, or otherwise extremely unfair (Walzer 1983, p. 102). That is, this objection holds even if we think that the terms of the trade are fair and that the choice made by the seller is uncoerced. The objection is based on the idea that people should not have to pay a cost for refusing to sell their body parts; that a person’s relationship to their body is so important that it should enjoy a special protection against the effects of market forces.

Of course, if people are desperate, then, even with the ban on kidney markets, they are likely to try to resort to the black market. If the state is too weak to enforce the ban, or not particularly inclined to do so, then a black market in organs will thrive, and this too will have a likely effect on the credit opportunities for poor people who do not wish to put their kidneys up for sale. According to many observers, the sale of organs on the black market has been reaching alarming proportions in the Third World, especially as advanced medical technology spreads. Regulating a legalized kidney market, rather than relying on a black market, would arguably go some way to redressing the worries about exploitation and one-sided terms of sale. If properly regulated, for example, an organ market might be structured to discourage sales from extremely poor donors. Or organs might be taken only after the seller’s death—a kind of futures market in organs. If the poor are as likely to participate in a black market for kidneys as in a legal market, then banning the exchange does not seem a good way of honouring their autonomy—it may not protect those who do not wish to sell their body parts from paying a cost. (Ironically, this point pushes in two different policy directions: where states can enforce market restrictions, autonomy may be best served by banning kidney markets; where the state is too weak to enforce a restriction, poor individuals may be better off with regulations to prevent abuse.)

C. Objectionable Inequality and Asymmetric Vulnerability. Even short of considerations of coercion and the nature of the effective choices a person has open to her, if there is a kidney market, then it is

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20 It is also a different objection from the one made recently by Michael Sandel (1998), namely that markets corrupt the meaning of certain goods, including body parts.
likely that poor people will be selling their organs to people who are much richer than they are. Current black markets in kidneys certainly reflect the different market situations of buyer and seller. Most sellers are poor; most buyers are at least comparatively wealthy. A system that relied on a kidney market of individual buyers and sellers for procurement and distribution would almost certainly have the consequence that poor people would disproportionately be the organ sellers of the world, and rich people the recipients (Williams 1994). By contrast, a procurement system that relies on donation is much more likely to have suppliers that come from all classes of people. Indeed, Titmuss found just such a contrast between the American and British systems of blood donation.

In his haunting novel *Never Let Me Go*, Kazuo Ishiguro (2004) imagines a world in which human clones are created to serve as organ donors for others. Before these created humans are middle-aged, they start to donate their vital organs. At the end of the novel, these purposely created humans ‘complete’, that is, die, by giving up the last vital organs they have for transplantation into others. Along parallel lines, some critics have charged that organ markets will turn desperately poor people effectively into ‘spare parts’ for the rich (Scheper-Hughes 2003, p. 1646). It has been keenly noted that international organ markets transfer organs from poor to rich, third world to first world, female to male, and minority to white. In her response to the argument that such organ markets nevertheless transfer money from the rich to the poor, Organs Watch founder Nancy Scheper-Hughes caustically quips that ‘... perhaps we should look for better ways of helping the destitute than dismantling them’ (quoted in Finkel 2001).

There is surely something disturbing about the picture of poor people supplying the rich with vital organs, just as the world Ishiguro portrays, where some are created to supply others with needed

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21 Indeed, the fact that there is increasing pressure to allow kidneys to be bought and sold itself arguably reflects the fact that those who seek to purchase them tend to have the cash to be able to do so. Contrast this with the situation of poor people whose health needs currently go unmet. Despite the fact that urgent health needs are shared by millions (billions?) of poor people, poor people have little cash. Therefore, their health needs tend to get far less attention than the health needs of the comparatively wealthy. Joe Shapiro (2003), in his undergraduate thesis ‘The Ethics and Efficacy of Banning Kidney Markets’, makes this observation as a framing background for his discussion of the morality of kidney markets.

22 The term ‘transplant tourism’ refers to wealthy individuals or their brokers from the developed world flying halfway around the world to less developed countries searching for organ sellers.
organs, is unsettling. Still, it’s important to realize that there are many services that the poor of this world already provide for the rich that are not reciprocally provided by the rich for the poor. Few, if any, wealthy people take hazardous jobs in mines, or work in nuclear power plants, or are employed cleaning other people’s latrines. Societies justify such tasks by pointing out that they are socially necessary and that what is important is that those who perform these tasks are justly compensated under conditions that meet health and safety standards. If that is so, then the inequality in suppliers per se doesn’t yet pick out what is objectionable: perhaps it simply pushes us back to ask again whether or not there is something special about a (poor) person’s relationship to his body.

Moreover, kidney sales do not cause the inequalities in our world between the haves and the have-nots. Rather, like a mirror, they reflect the current underlying inequalities in our social world. If we do not like the image of inequality and human vulnerability that this mirror holds up to us, we do not change that image by breaking the glass.

At the same time, I think critics raise the legitimate concern that the introduction of kidney markets will actually worsen existing inequality. Such markets potentially expand inequality by including body parts in the scope of things that money gives a person access to. At the moment, there are people waiting on kidney transplant lists have little or no money. To a large extent, a person receives a kidney for reasons that are independent of his ability to pay. By contrast, a kidney market would seem to mean that kidneys go to the highest bidders. But shouldn’t kidneys be allocated to people on the basis of need, length of time waiting and medical suitability, and not on the basis of ability to pay?

Theoretically, of course, a legalized organ market could be regulated to ensure that rich and poor have access to kidneys, with the government providing funding for the organ purchases of poor buyers. Through subsidy and insurance, the government could seek to make the demand for kidneys independent of the wealth of the buyer. Additionally, the government might devote itself to finding donors for poorer patients (Shapiro 2003, p. 120). From an egalitarian viewpoint, these regulations are desirable. Indeed, the government might create a monopsony in which it was the only legal buyer of organs. And it could buy these organs using a futures market, in which people are paid for their organs only after their death, as a
way of staving off coercive ploys. However, even if a government took such measures, it remains difficult for any government with limited resources and other priorities, to make kidney allocation completely independent of the wealth of the donor. Establishing a maximum price for kidneys under a monopsony might recreate some of the shortages that the kidney market was designed to overcome, especially if the availability of subsidized kidneys created a moral hazard problem.23

D. Agency Failures. While ideal markets involve fully informed participants, many markets do not—and in fact cannot—function on that basis. This is because many market transactions involve consequences that can only be known in the future. Kidney transplants involve surgical operations, and like all surgical operations, entail risks. In a careful study of Indian kidney sellers, many of those sellers developed complications from the operations: 86% of the participants in the study reported a marked deterioration in their health following their nephrectomy (Goyal et al. 2002). Although one kidney is capable of cleansing the blood if it is functioning well, the removal of the other one leaves the seller vulnerable to future problems if the remaining kidney becomes damaged or if its filtering capability declines. (In fact, the decrease in filtering capacity is a normal byproduct of ageing.)

Needless to say the poor who sell their kidneys in the developing world have no health insurance and no claim on an additional kidney if their remaining one fails to function properly. Moreover, while most studies of kidney transplants have reported little adverse effects for the donors, these studies have been overwhelmingly conducted in wealthy countries; we simply do not know whether people in poor countries do as well with only one kidney as those in rich countries. Health risks are likely to be greater in places where people have little access to clean water or adequate nutrition, and are often engaged in difficult manual labour.

Two other facts stand out in the Indian case cited above: first, an overwhelming majority of those interviewed (79%) regretted their decision and would not recommend that others sell a kidney; and second, a majority of sellers found and interviewed (71%) were

23 To what extent would the availability of kidneys indemnify individuals against the effects of bad health choices (obesity, etc.)? Thanks to Annabelle Lever for pressing this point.
married women. Given the weak position of women in Indian society, the voluntary nature of the sales is questionable. The most common explanation offered by wives as to why they and not their husbands sold their organs were that the husbands were the family’s income source (30%) or were ill (28%). Of course, as the authors of the study point out, most of the interviews of women were conducted in the presence of their husbands or other family members, so they may have been reluctant to admit to being forced to donate.

Weak agency is a serious problem for those who wish to base their defence of the market in organs on the right of a person to make his or her own decisions with respect to their body parts. The fact that most organ sellers would not recommend the practice suggest that potential sellers would be far less likely to sell a kidney if they were better informed of the likely outcomes of their sale. It is likely to be difficult to imagine what it means to lose a kidney before one actually experiences its loss. When we couple the information problems of the seller with the lack of benefit — indeed with the possibility of harm — the case for allowing a kidney market in our non-ideal world seems weak.

A defender of organ markets might reply that the appropriate response to the diminished agency of sellers is simply to make sure they are better informed about the likely consequences of their transactions and to protect them from exploitation by enforcing the terms of the contracts they make. For example, organ sellers could be required to take classes dealing with the risks of live organ donation and to demonstrate that they understand the likely consequences of their acts. However, given the horrific poverty that many sellers face, and perhaps their lack of education, it is unclear to what extent they will refrain from undertaking the transaction simply because of the risks. Additionally, in poorer countries, regulatory institutions are weak and under-funded.

Note, however, that the argument from weak agency — lack of information about how one will feel in the future about the sale — might lead us to discourage altruistic organ donations as well as paid donations. That is, the argument doesn’t really single out what is problematic about the kidney market. If the health risks for donors are substantial, then perhaps all such transfers from living donors should be banned. (It is doubtful that altruistic donation is really made from the vantage point of full knowledge and considered judgement, since family members are often under enormous
pressure to donate and parents are free to donate the organs of their own children.)

Currently we allow people to engage in risky occupations (e.g. work in nuclear reactor plants); we do not prohibit markets enabling people to engage in risky behaviours such as cigarette smoking and sky-diving; and we rely on financial incentives in military recruitment, which also exposes individuals to grave risks. So to the extent that the argument about weak agency is compelling, it won’t help us understand the distinction we draw between kidney markets and these other markets.

III

Concluding Thoughts. I’ve analysed kidney markets through the lens of choice and choice sets, inequality and weak information—looking at the case for curtailing such markets based on these parameters under both existing and more ideal circumstances. Market regulation may go some way to solving the problems along the dimensions of weak information and inequality; it is also possible that any harmful outcomes from giving up a kidney can be mitigated through appropriate follow-up care, access to a replacement organ if needed, and so on. The choice issue is somewhat different, when viewed through the lens of the effects of such markets on the choices now open to others who do not wish to participate in this market. Both banning and allowing kidney sales may have an effect on other prices—for example, on the prices of credit and labour. That is, banning and allowing such sales has effects on the choice sets that are available to people. If we think that there are some choices that people should have open to them as a right, then we may think that it is inappropriate to ask people to pay a cost for making these choices. I think that this is the strongest argument against allowing kidney markets in more ideal circumstances than our own: that they make people incur a price that they can reasonably think that they shouldn’t have to pay.24 That is, the strongest argument against such markets must ultimately rest on our judgement that a person’s rela-

24 Kant (1996) strongly suggested that sales of our body parts undermined our status as persons. A person who thinks that all of their parts have prices might think that it is acceptable to sell off all of themselves or to buy all of the parts of others. If this is so, then perhaps one way to understand a ban on organ sales is as an extension of our revulsion with slavery.

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tionship with their body (and its parts, or at least most of its parts)\textsuperscript{25} is so important that it is not something that we should allow markets to influence.

At the same time, many of the most obvious problems with kidney markets arise because such markets are not likely to be ideal markets, but rather markets in which there are widespread market failures—weak agency, significant pockets of monopoly power, and human desperation leading to exploitation and inadequate pricing. The answer to these problems may lie with regulations to ensure adequate information on the parts of buyer and seller, transfers of income to the poor to remove their desperation, the imposition and enforcement of mandatory standards for health and post-operative care of donors, and perhaps bans on the international trade of kidneys. Other problems—such as the use of income to purchase goods that others desperately need but may not be able to afford—might be rectified by creating a monopsony, with the state the only legal buyer, and distribution on the basis of medical need.

In reflecting on the values at stake in different kinds of markets, I think that we can see why kidney markets are viewed as different from apple markets. And, even if some of us disagree about whether markets of any kind are admissible in the case of kidneys, we may agree that markets of particular kinds should not be admissible—their costs to the values we hold important may be too high.

Some of the values I have discussed are actually internal to the functioning of markets—for example, perfect information is assumed by the efficiency theorems of welfare economics; if the introduction of markets actually serves to decrease supply, then there is no social cost to banning them, etc. Some of these values are external to the functioning of markets: that in matters of life and death urgent needs should trump ability to pay—but widely shared. Some of these values are more controversial: for example, the list of goods that no one should have to pay a price for refusing to sell. What I want to highlight is that while some of these values are in play in other kinds of markets, others are not. For example, weak agency is probably not a parameter usually at issue in apple markets.

I want to conclude this paper by considering briefly how a number of recent proposals for kidney markets fare along the di-

\textsuperscript{25}There are reasonable debates about whether a person should be able to sell their gametes, etc.
dimensions I have set out: choice, agency, and inequality. The proposals I consider are: markets governing both the supply and the demand for kidneys—treating kidneys as, for example, computers or apples; markets governing the supply of kidneys only while distributing on the basis of need, not ability to pay; futures markets where a person’s organs are only given up upon death; and in-kind exchanges in which a patient with a willing donor who has an incompatible blood type can exchange with another such incompatible patient donor pair (Roth, Sonmez and Unver 2005).

A plus indicates a high (worrying) score along a dimension, while a minus indicates a relatively low score, as shown in the table below:26

<table>
<thead>
<tr>
<th></th>
<th>Weak Agency</th>
<th>Inequality</th>
<th>Restricts Choice Sets</th>
</tr>
</thead>
<tbody>
<tr>
<td>Markets in supply and demand</td>
<td>+</td>
<td>+</td>
<td>+</td>
</tr>
<tr>
<td>Markets in supply only</td>
<td>+</td>
<td>–</td>
<td>+</td>
</tr>
<tr>
<td>Futures Markets</td>
<td>+</td>
<td>– ?</td>
<td>?–</td>
</tr>
<tr>
<td>Matching markets</td>
<td>+</td>
<td>–</td>
<td>–</td>
</tr>
</tbody>
</table>

* Since harvesting kidneys from living donors involves risks, in these cases the lack of information is coupled with the potential for harmful outcomes.27

As can be seen from this schematic table, pure markets in kidneys appear to be the most problematic, scoring high on weak agency (with the possibility of harm), inequality, and external effects on choice sets. By contrast, a market in apples or computers would not, under normal circumstances, score high along all of these dimensions. Given the imperfect information (what I have been calling ‘weak agency’) coupled with the potential for harmful outcomes in all markets with living donors, as well as the inequality in access to urgently needed goods, we should view the introduction of these markets with extreme suspicion.

On my view, the greater the extent to which the concerns raised along the various dimensions of a kidney market can be addressed, then the more acceptable is the market. In particular, for those who worry that legalizing certain kinds of voluntary transactions changes the terms of trade to disadvantage those who do not want to participate in them, the question is whether mechanisms can be found

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26 The idea for this chart comes from Kanbur (2004).
27 See also Satz (2004).
that would prevent kidney sales from entering into other kinds of contracts: for example, as collateral, as payment for other medical services, as repayment for debts, or as means of eligibility for social services. Or, as another example, the greater the extent to which agency can be increased—through informed consent protocols and increased education—the less problematic the market.

And if these concerns cannot be adequately addressed—whether through information dissemination, regulation, income transfer, blocked exchanges, and so forth—then other possibilities besides markets with living donors need to be considered, including a futures market in kidneys (where the payment and sale is completed only after the seller’s death), increased exhortation to donate, and in-kind kidney exchange. Meanwhile, given the desperation on both the seller and buyer sides of the equation, the search for solutions to the shortage of transplantable organs is likely to be with us for a long time to come.28

REFERENCES


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