

THE CASE FOR KIDNEY SALES

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Abstract. In every country where transplantation of human organs takes place, there is a shortage of transplant kidneys. As a result, many people die or suffer severely while waiting for a kidney. In almost all of these countries it is illegal to buy or sell human kidneys. This short paper is a contribution to the current debate about whether we should introduce a regulated living donor organ market in order to increase the number of available kidneys. The moral question central to this debate is whether we should allow people to sell their own body parts and have them removed while they are alive. Here it is argued that while there are possible objections to permitting kidney sales, they ultimately do not succeed in justifying a complete ban, and the current ban of kidney sales is therefore morally highly problematic.

INTRODUCTION

The number of people waiting for a kidney transplant by far exceeds the number of available kidneys. In the UK alone there are currently about 9000 people on the waiting list. It can be expected that only 2000 of these will have received a transplant organ within one year (see NHS 2012). The others will either still be suffering or will already have died. In other words, there is a critical undersupply of human kidneys. In recent years, one possible way of dealing with this problem has found increasing support among economists, medical doctors and moral philosophers. This is the possibility of allowing people to sell one of their kidneys and have it removed while they are still alive to make it available for transplantation into a person in need of a kidney transplant. This practice is illegal in almost every country. In the following I want to argue that the current ban of kidney sales is morally highly problematic, if not unacceptable, and that a regulated market for human kidneys should be introduced. There are four short sections to this essay. In the first section, some conceptual difficulties are clarified and three moral arguments for permitting organ sales are identified. The remaining three sections each deal with one of these arguments and possible objections against it.

THE ISSUE AT STAKE

There are, broadly speaking, four different categories of human organ donation. Organs can either be retrieved from deceased or from living donors. These organs can then either be donated directly to an identified receiver or can be donated without being directed to an identified receiver. The only category I am concerned with here is non-directed donation by living donors. This is because this is the most problematic of the four cases and raises many interesting moral issues.

It is also the category on which the market would likely have the greatest impact, because non-directed organ donations by living donors are so rare that this category hardly exists under the current system (see NHS 2012). Since I am only concerned with living donors/vendors, I am, for obvious reasons, only concerned with donations/sales of kidneys, rather than other organs like hearts or livers.

There are in general three moral arguments that can be put forward to promote the permission of kidney sales from living vendors:

- A)** Allowing people to sell one kidney would promote the well-being of people in need of a kidney transplant.
- B)** Not allowing people to sell one kidney is a violation of their rights to their own bodies and their autonomy.
- C)** Allowing people to sell one kidney would promote the well-being of poor people by giving them an additional option to raise funds.

Below I will discuss these three arguments, defending them against objections that have been and could be raised against them.

A. PROMOTING THE WELL-BEING OF PEOPLE IN NEED OF A TRANSPLANT

In the following section I want to present the idea that we ought to allow kidney sales, since by doing so we could help many people in need of an organ transplant. This is the most undisputed of the three above arguments and it rests on three premises:

1. It is our goal to reduce the suffering and increase the well-being of human beings.
2. If the supply of human kidneys were higher, we could reduce the suffering and increase the well-being of those who are in need of a kidney transplant.
3. If we permitted kidney sales, many people would want to sell one of their kidneys in order to raise money and the supply of human kidneys would rise significantly.

Therefore, we should permit kidney sales.

I believe that the only premise of the above three that could sincerely be contested is premise 3. In the following section I will discuss objections against it that have been put forward.

POSSIBLE OBJECTIONS

While it might seem obvious that a market for organs would increase the number of organs available for transplantation, the claim is not beyond doubt. Richard Titmuss (1970), for example, argued that, regarding blood donations, a market for blood would actually decrease the supply of blood because it would diminish altruistic motivations to donate. According to Simon Rippon (2012), this is also possible in the case of kidneys. This is a claim of empirical matter that I cannot satisfactorily examine in this philosophical analysis. From my point of view, however, there are at least two reasons to be skeptical about said claim.

First of all, it is hard to see why the mere possibility of selling would stop people from giving. In fact, introducing the opportunity to sell one kidney could even increase altruistic motivations. After all, giving away something one also could have sold is even “nobler” than giving away something that cannot be sold.

Second of all, the case of organ donation is a very specific one and very different from blood donation. Unlike blood donations, almost all cases of living kidney donations occur between family members or close friends. The so called non-directed donations only account for a fraction of all kidney donations. Out of 1009 kidney donations from living donors in the UK between April 2011 and March 2012, only 35 were non-directed (see NHS 2012: 32). It seems to be this small number that might be diminished by the possibility of selling kidneys. We can hardly imagine that family members would stop donating kidneys to their relatives if the mere possibility to sell kidneys were introduced. Moreover, even if a marginal decline in altruistic donations would occur, it seems reasonable to expect that an increase in the supply of transplant-organs due the introduction of a market would more than compensate for it. We can therefore reasonably expect that, as a consequence of permitting sales, the supply of human kidneys would rise.

Now it can be argued that even if the supply in kidneys rose, there would still be those who would not be able to afford to buy a kidney on the market. Is the current system not better for them? While this might be a valid objection against an unfettered market (like the black market that exists now), it is not an objection against a regulated market. Nearly all proponents of kidney sales, including myself, argue for the introduction of a regulated market, not a free market. We can imagine a system, where “there would be only one purchaser, an agency like the National Health Service (NHS), which would buy all organs and distribute [them] according to some fair conception of medical priority” (Erin and Harris 2003: 1). This way it could be secured that individual wealth does not play a role in the distribution of kidneys.

Let me now turn to the “supply side” of a market for kidneys. In the following I will argue that the permission of kidney sales is mandatory if we want to promote autonomy or a notion of self-ownership.

B. PROMOTING AUTONOMY OR A NOTION OF SELF-OWNERSHIP

There is a wide range of moral issues surrounding claims about physical autonomy and notions of self-ownership. In fact, this field of ethical enquiry is so wide that I can hardly do it justice here. For the purpose of this essay, let me assume that we have a strong intuition that every person has at least some form of a fundamental right to her body and that this intuition is more or less correct. What follows from this assumption is that every person has the right to decide what happens to her own body, unless there are other considerations that override this right (also see Wilkinson 2012: 5). There are, broadly speaking, two categories of considerations that could possibly override this right. Either the action in question is considerably harmful to third parties, or it is harmful to the very person whose right is the object of investigation. The argument based on a promotion of autonomy or notion of self-ownership, then, is the following:

1. Every person has some fundamental right to her own body and can autonomously choose what happens to it, as long as other substantial considerations do not override this right.
2. A ban on kidney sales is a violation of this right.
3. There are no substantial considerations regarding kidney sales that override this right.

Therefore, we should permit kidney sales.

POSSIBLE OBJECTIONS

Objections against this argument usually take up two forms. They either attack premise 2 or premise 3. Let me start with possible objections against premise 2.

When discussing this argument, it is helpful to consider who might want to sell a kidney. It is most likely that almost only poor people would want to donate one kidney in exchange for money. Losing one kidney is connected to a number of health risks. A sale “leaves the seller vulnerable to future problems if the remaining kidney becomes damaged or if its filtering capability declines” (Satz 2010: 196). Selling a kidney might be an act of desperation, an act of last resort. Therefore, it has been argued that sellers are likely to practically have been coerced into selling. According

to Paul Hughes (2009), this would then mean that they in fact did not act autonomously when deciding to sell one kidney. Hughes argues that this is a case of coerced consent and does not count as genuine consent. Such a choice then is deemed to be far from autonomous. And if they did not autonomously choose to sell but had been coerced into selling, a ban on sales does not violate autonomy. It also does not violate the right to one's own body, since sellers would not have done anything to their bodies if only they had not been coerced into selling.

There are a number of problems with this argument. First of all, suppose that the objection is true and many poor people in fact would be coerced into selling a kidney. This would still not show how a ban on sales would not violate the autonomy of those vendors who in fact would be making a voluntary and autonomous choice. It would still not justify keeping those, who, for example, already have enough funds not to be forced (by the above definition) into selling, from taking part in a transaction. "Our usual principles about autonomy and consent demand our assessing competence [to choose or decide] on a case-by-case basis" (Radcliffe Richards 2007: 257) and do not justify a complete ban. This objection then could be met by the introduction of a system which provides information and medical counseling to potential vendors.

Second of all, if it is argued that vendors would be coerced into selling by poverty, it could just as well be argued that donors under the current system are practically coerced into donating by other factors than poverty. "They are, metaphorically, coerced into it by the impending death of someone they care about," (Radcliffe Richards 2007: 258) by family pressure and so forth.

There is another problem with the objection against (B) on the grounds of coercion. It is highly inconsistent with the fact that it is often the financially worst of members of society that take up the most dangerous jobs. If we believe that poor people would be forced into selling a kidney we could just as well argue that poor people are forced into working in power plants, coal mines or into joining the army. They are coerced to do so, because these jobs pay exceptionally well, just as selling one kidney would (see Wilkinson and Garrard 1996). We would therefore also need to stop poor people from "selling their labour", and not just their kidneys.

But even if we, for the sake of argument, accepted the claim that potential vendors would be forced into selling by poverty, it does not justify a ban on kidney sales. The problem is that it would be poverty and not the mere possibility of selling a kidney that would force them into selling. If this was our belief, the right reaction would be to eliminate the force that coerces them into selling, namely poverty and not the possibility to sell. This is a very subtle point, but an important distinction to make. If a family of four was forced by poverty to live in a tiny room with no heating and no water, our natural reaction would not be to burn down the house they live in because we find their situation unbearable. The right reaction would be to help them overcome poverty. So if we believed that potential vendors of kidneys would only sell because

they are forced by poverty to do so, then the right reaction would be to help them overcome poverty and not take away their option of last resort. There are other important considerations, how the permission of kidney sales would influence the situation of people in poverty. These are dealt with in section (C).

We have seen that the objections against (B) on the grounds of coercion are not successful or at least highly inconsistent with other widely accepted practices, like unpaid organ donation or our acceptance of the fact that those who are financially worse off often take on dangerous professions. Let me now turn to objections against premise 3 of (B).

The remaining question is whether, in the case of kidney sales, there are more important considerations that possibly override a right to one's own body. As mentioned above there are two categories of objections. It can either be argued that the sale of kidneys is considerably harmful to third parties or that it is considerably harmful to those very people who would sell one kidney if it were allowed. Let me start with the first category.

Under (A) I have already shown that permitting kidney sales is at least very likely to help those in need of a kidney transplant and will therefore not harm them. What are other third parties that might be affected by the permission of kidney sales? A market for kidneys could be harmful to those who are not able to sell a kidney, even if they wanted to. Those could be the people who only have one healthy kidney. Is a market harmful to them? They would have a competitive disadvantage against those who are able to sell one kidney and raise money.

But is this objection strong enough to ban a market for kidneys? I do not think so. If we were to ban kidney sales for this reason, then we ought to ban all kinds of markets. We, for example, would need to ban a market for professional sports. Nobody should be allowed to play sports for money. Professional athletes have a very rare gift. They are so talented that they earn a lot of money by playing sports. Is that not unfair to the rest of us, who are not as gifted as professional athletes? Of course, becoming a professional athlete requires a lot of hard work, but it also requires a lot of talent and luck. Hard work alone is hardly enough. Should we ban professional sports because it is unfair to the rest of us, who are not as talented? Hardly anybody would agree to this. The claim, that a market for kidneys might harm third parties, does not appear to be strong enough to justify a complete ban of it.

Let me now turn to the second category of objections against (B), that a market for organs would considerably harm potential vendors and that the harm is so great that it overrides considerations of autonomy or self-ownership. I will discuss these objections in the next section, as they are the same as the objections against (C), that a market for organs would promote the well-being of poor people as potential vendors.

C. PROMOTING THE WELL-BEING OF POOR PEOPLE

In section (A) it has been established that a regulated market for organs is very likely to help those in need of a transplant kidney. In the last section it has furthermore been admitted that it is likely that only the poorer members of society would want to sell one of their kidneys. It is therefore important to consider whether a market would also benefit potential sellers. The argument for promoting the well-being of poorer people is the following:

1. It is our goal to alleviate poverty and to make poor people better off.
2. Giving poor people the legal opportunity to sell one of their kidneys would make them better off by giving them an opportunity to raise funds they currently do not have.

Therefore, we should permit kidney sales.

Although the first premise may not be undisputed by some scholars, I assume it to be true for the purpose of this essay. This is partly because it is a widely held view and partly because nearly all opponents of kidney sales only attack premise 2, which is highly controversial. In the following I want to present two objections that have been put forward against premise 2 and will argue that they ultimately do not succeed in justifying a ban on kidney sales.

POSSIBLE OBJECTIONS

The first objection against premise 2 is that, even though potential vendors have autonomously consented to selling one kidney, “they are simply wrong about the transaction being to their benefit” (Radcliffe Richards 2007: 259). This is the claim that selling one kidney can never be to the seller’s advantage. We all know the horror stories about a black market in organs, where people who have sold a kidney suffer severely or even die from the consequences of the operation. But these are stories about an illegal black market, where surgeries take place in horrible circumstances and where nobody cares about the organ donor after a healthy kidney has been retrieved.

Quite the opposite is the case regarding current legal practices of unpaid living kidney donation. This practice is almost unanimously encouraged by doctors all over the world. While living with only one kidney, of course, bears some risks, the procedure itself is deemed safe. There is no reason to believe that the mere fact of payment should change anything about this. If paid organ donation was carried out in the exact same way, with the same doctors and the same care, it would be just as safe as unpaid organ donation. Anybody who opposes legal and controlled organ sales on the ground that it is unsafe and dangerous for the seller must therefore also oppose unpaid

living organ donation. It is highly inconsistent to encourage organ donation but ban organ sales on grounds of safety. Let me now turn to the second objection against premise 2.

The underlying idea of premise 2 is that giving someone the option to sell one kidney while leaving all remaining options untouched cannot make him or her worse off.¹ According to Simon Rippon (2012), this is false. Rippon argues that, while it might be true that it would be better to sell one kidney, given the fact that one had the option, it does not follow that this is the best option overall. He claims that not even having the option to sell is better than having the option and selling. The preference structure, he implicitly develops, then, is the following:

1. Not having the option to sell one kidney.
2. Having the option to sell one kidney and taking it.
3. Having the option to sell one kidney and not taking it.

If this were correct, giving poor people the opportunity to legally sell one kidney would actually make them worse off and premise 2 would be false. Rippon creates a scenario where having the option to sell one kidney and refusing to take it would have devastating consequences. As Richard Dworkin wrote in another context: “Once I am aware that I have a choice, my failure to choose now counts against me. I now can be responsible, and be held responsible, for events that prior to the possibility of choosing were not attributable to me” (as quoted by Rippon, Dworkin 1982: 50). According to Rippon, kidneys would then count as economic resources, as “collateral”, that can be taken away from someone who is in debt, just like a house or a car. Kidneys would be commodified. This would lead to social and legal costs for failing to sell them.

This is a valid objection against an unregulated market in organs. It, however, does not pose any problems that could not be dealt with by carefully regulating a market for kidneys. Even if kidneys were seen as “commodities”, they still do not have to count as collateral. In most countries there is a range of commodities that cannot be taken as collateral (basic shelter, clothing, or even a TV). Just as nobody can be legally forced to sell these objects to pay off his or her debt, or just as nobody can be legally forced prostitute himself to pay off his or her debt, nobody should be legally forced to sell a kidney. As many other objections, the objection raised by Rippon can therefore be dealt with by regulating, rather than banning a market for kidneys. The economic principle that, “by allowing individuals to either barter or sell something, we increase their level of well-being” (Dworkin 1994: 9. 156) remains untouched by the objections against (C).

¹ It is important to note that I do not argue that additional options can never make the person choosing worse off. I simply claim that this is true in this specific case.

CONCLUSION

We have seen that almost all objections against a market in kidneys are either wrong, inconsistent with a number of other policies, or can be met by regulating, rather than banning a market. We have furthermore seen that a regulated market would benefit people in need of a transplant kidney and people who are willing to sell one kidney. It has also been shown that the current ban is at least very likely to violate autonomy and considerations of self-ownership. If there are no more important considerations than the ones that have been dealt with here, I believe that the demand for a regulated market for kidneys is morally warranted.

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