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The Unintended Costs of Kidney Markets: Do Pecuniary Externalities Count in Favour of Banning Kidney Sales?

Nico Tank*

Abstract

This paper discusses one of Debra Satz's arguments in favour of banning kidney sales. Satz argues that kidney sales might result in costs for those unwilling to sell a kidney and that this may be seen as morally problematic. In my paper I will develop two objections against Satz's argument. First, I will argue that it is not wrong to make people pay a cost for their unwillingness to sell a kidney. Second, I will argue that the costs Satz describes are not costs people have to pay for their unwillingness to sell a kidney.

Introduction

The question whether we should legalise kidney sales to raise the number of kidneys available for transplantation has been widely discussed. Most proponents of the legalisation of kidney sales point to the autonomy of potential sellers,

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to unacceptable circumstances on black markets or to the necessity of raising the number of available organs. Most of the ethical arguments against legalising kidney sales depend on the assumption that practices like selling organs are likely to exploit the poor or to coerce them to sell their kidneys. Debra Satz[1] suggests an entirely new argument in favour of banning kidney sales. She points out that – through price mechanisms – kidney markets might have negative consequences for those who are unwilling to sell a kidney. Satz infers that we need to ask whether people should have to pay a cost for their unwillingness to sell a kidney.

In this paper I will discuss the force of this argument. Section I presents Satz's argument against the legalisation of kidney sales. Section II asks whether it is wrong to make people pay a cost for their unwillingness to sell a kidney. I will argue that such costs are not morally wrong by themselves but only in case they coerce people to sell a kidney. Therefore, the described price effects are only one tiny cost factor beside other much greater cost factors which might coerce the poor to sell a kidney. Section III asks whether costs due to the described price effects are really costs people have to pay for their unwillingness to sell a kidney. I will argue that these costs are better understood as costs people have to pay for having a legal kidney market. As such, the described price effects are only one tiny cost factor beside other much greater cost factors for the introduction of a legal kidney market. Each of the results of sections IV and V is sufficient to reject Satz's argument. The described price effects can therefore not be said to be of any special relevance for the question whether we should ban kidney sales.

[1] Satz, 'The Moral Limits of Markets: The Case of Human Kidneys' 269-288, and Satz, 'Ethical Issues in the Supply and Demand of Human Kidneys' 189-205.

I. Satz's pecuniary externalities argument

Satz starts off by arguing that the introduction of kidney markets might make some people worse off due to pecuniary externalities of kidney sales.[2] *Externalities* are consequences of commercial or industrial activity which affect parties not involved in the activity. One example is air pollution due to manufacturing processes that imposes health costs on the whole society. *Pecuniary externalities* constitute a special case of externalities that operate through prices rather than through direct resource allocations. For example, real estate speculation might lead to an increase in housing prices, making it difficult for people in the area to afford housing. To exemplify why kidney sales might have pecuniary externalities, Satz refers to findings of the anthropologist Lawrence Cohen. Cohen found that in some areas of India, where selling a kidney on the black market is relatively common, people's kidneys are considered collateral for loans.[3] Satz goes on to argue that due to practices like this, kidney sales could have pecuniary externalities. The idea is that people who are willing to use their kidneys as collateral when applying for loans will get more loans and better conditions for their loans than in a scenario where it is not possible to sell a kidney. If we furthermore assume that the total amount of loans is more or less fixed, then those unwilling to use their kidney as collateral might get viewer loans or might have to pay higher interest rates than in a scenario where kidney sales are not possible. The legalization of kidney sales would make kidney selling a wide spread practice and could thereby raise the amount of pecuniary externalities caused by kidney sales. If this causes costs for some of those unwilling to sell a kidney, kidney markets will have harmful consequences.

However, Satz admits that other markets also generate pecuniary external-

[2] Satz, 'Ethical Issues in the Supply and Demand of Human Kidneys' 200.

[3] Cohen, 'Where it Hurts: Indian Material for an Ethics of Organ Transplantation' 673. (According to Cohen, kidneys are considered collateral in the sense that money lenders will point to an operable wife or daughter in case a borrower is not able to pay back his debts.)

ities and we usually do not find that troubling. Therefore, demonstrating that kidney sales cause pecuniary externalities does not suffice to show that kidney markets should be blocked. Instead we need to ask 'Should people have to pay a cost for their unwillingness to sell their organs?.'[4] According to Satz, it is unclear why people should not have to part with their kidneys if we regarded kidneys as resources analogous to other resources like apples or money. But many people resist this analogy. According to Satz, these people seem to follow Ronald Dworkin who argues that we should draw a 'prophylactic line' around the body which indicates that body parts are 'not part of social resources at all.'[5] If we think that people should therefore have a right not to sell their kidney, 'then we may think that it is inappropriate to ask people to pay a cost for making these choices.'[6]

Satz's argument can be presented formally as follows.

> (A) It is morally wrong to make people pay a cost for their unwillingness to sell a kidney.
>
> (B) If we legalise kidney sales, pecuniary externalities of kidney transactions will make some people pay a cost for their unwillingness to sell a kidney.

From (A) and (B) follows (C):

> (C) If we legalise kidney sales, this will result in a moral wrong.

The argument seems to be valid. Thus, what needs closer examination are the premises (A) and (B). Premise (A) will be addressed in the next section. In the section thereafter I will discuss premise (B). In my discussion I will take

[4] Satz, 'Ethical Issues in the Supply and Demand of Human Kidneys' 201.
[5] Dworkin, 'Comment on Narveson: In Defense of Equality' 39.
[6] Satz, 'The Moral Limits of Markets: The Case of Human Kidneys' 269-288.

most of Satz's empirical assumptions for granted, for the sake of her argument.[7] Particularly, I will assume that there are pecuniary externalities due to kidney sales and that they would overall increase if we legalised kidney sales. However, I will also assume that the individual's costs due to pecuniary externalities will be rather limited, even if we legalise kidney sales. Since the persuasiveness of my arguments in section 3 and 4 partly depends on this assumption, I will shortly outline why I think this is a reasonable assumption. First, no such pecuniary externalities have ever been documented. Even Cohen,[8] who provides Satz's only example for a case in which kidney sales might have pecuniary externalities, does himself not explicitly mention any effects on other prices. Furthermore, I could not find any proof of pecuniary externalities in the literature on the kidney market of Iran, the only country so far, in which kidney sales have been legalised.[9] That these effects were not documented so far does, of course, not mean that they do not exist. However, it might indicate that the effects are at least not very severe. Second, dubious practices that might be likely to cause pecuniary externalities – like using kidneys as collateral for loans – will probably rather be reduced if there is a legal regulated kidney market instead of the current black market system. The reason is that governments have more possibilities to limit such practices if kidney transactions take place on a legal kidney market. Third, the 'regular' pecuniary externalities of kidney sales, that are those pecuniary externalities which result simply from buying and selling kidneys, will most likely be very limited. This is because the amount of money which would be paid in a legal kidney market is negligibly small as compared

[7] However, there are certainly reasons to doubt some of Satz's empirical claims. For instance, the assumption that the total amount of loans is more or less fixed seems to be highly questionable, especially with regard to the financial systems of western countries. If this assumption does not hold, then it seems to be more disputable whether the better collateral of the one would influence the interest rates of the other.

[8] Cohen, 'Where it Hurts: Indian Material for an Ethics of Organ Transplantation' 663-688.

[9] See for example Hippen, 'Organ Sales and Moral Travails: Lessons from the Living Kidney Vendor Program in Iran' 1-20.

to the amount of money moved in the economy as a whole and the number of people living in the economy.

I am aware that more evidence is needed to determine how pecuniary externalities of kidney sales will turn out if we introduce a legal kidney market. However, I hope the above considerations render my assumption acceptable that pecuniary externalities of legal kidney markets will most likely not cause a huge increase in individual's costs.

II. Is it wrong to make people pay a cost for their unwillingness to sell a kidney?

For the sake of argument, I will take for granted premise (B) in this section, according to which pecuniary externalities of legal kidney markets result in costs which people have to pay for their unwillingness to sell a kidney. We then need to ask whether it is wrong to make people pay a cost for their unwillingness to sell a kidney. Satz argues that if we think people should have open to them the right not to sell a kidney, 'then we may think that it is inappropriate to ask people to pay a cost for making these choices.'[10] As Satz rightly points out, the antecedent of this implication – the claim that people have the right not to sell a kidney – needs to be justified under reference to some special characteristic which distinguishes kidneys from other resources we have. For the sake of argument, I will take this special status of kidneys for granted.[11] Accordingly, I will assume that people have the right not to sell a kidney. If people have the right not to sell a kidney, then they should not be coerced to sell a kidney, neither by others nor by the circumstances in which they find themselves.[12]

[10]Satz, 'The Moral Limits of Markets: The Case of Human Kidneys' 283.

[11]For a prominent defence of the human body's special status see Dworkin, 'Comment on Narveson: In Defense of Equality' 24-40. For a recent critique of this position see Fabre, Whose Body is it Anyway: Justice and the Integrity of the Person.

[12]For instance, nobody should be so poor that one has to sell a kidney to stay alive or to feed the family.

However, even if we take this right for granted, it is not necessarily wrong to make people pay a cost for their unwillingness to sell a kidney. These costs are not morally problematic by themselves but only if they coerce people to sell their kidney. Thus, it is the potential to coerce people to sell a kidney which might make pecuniary externalities of kidney sales morally relevant. However, this potential seems to be insufficient to ascribe any special moral relevance to pecuniary externalities of kidney sales. The reason is that all kinds of costs have the potential to coerce people to sell a kidney. For instance increasing taxes or food prices might also coerce the poor to sell a kidney. Thus, pecuniary externalities of kidney sales seem to be only a tiny cost factor beside other much greater cost factors which might coerce the poor to sell a kidney.

One might object that the coercion potential of pecuniary externalities of kidney sales is different from that of other cost factors. The reason is that people pay the costs that are due to pecuniary externalities of kidney sales directly for their unwillingness to sell a kidney. For psychological reasons, such direct costs are much more likely to coerce one to sell a kidney than other costs. Analogously a fine for not donating blood seems to be more likely to coerce people to donate blood for money than a general increase in, say, food prices. However, this objection relies on a very disputable psychological claim. It assumes that people will actually perceive the costs due to pecuniary externalities of kidney sales as costs for not selling a kidney. Only then, costs due to pecuniary externalities of kidney sales might have this special potential to coerce people to sell a kidney. However, this psychological claim is highly doubtable since the costs due to pecuniary externalities of kidney sales will most likely not be identifiable as such. The reason is that these price effects will be rather small and only one beside other much more important factors which influence our prices. Accordingly, it is very unlikely that costs due to pecuniary externalities of kidney sales will be considered costs for the unwillingness to sell a kidney. Thus, the coercion potential of pecuniary externalities of kidney sales does not seem to be crucially different from other much greater cost factors which might coerce us to sell a kidney. Pecuniary externalities of kidney sales can then hardly be said to be of any special relevance for the question whether we should ban kidney sales.

In this section I argued that even if pecuniary externalities of kidney markets resulted in costs people have to pay for their unwillingness to sell a kidney, such costs would not be of any special relevance for the question whether we should ban kidney sales. In the next section I will argue that not even the antecedent of this implication holds: Pecuniary externalities of kidney markets do not result in costs people have to pay for their unwillingness to sell a kidney.

III. Would people have to pay a cost for their unwillingness to sell a kidney?

In this section I want to discuss the question whether pecuniary externalities of kidney sales are really costs people have to pay *for their unwillingness to sell a kidney*. If they are not, premise (B) does not hold. I will argue that the costs which are due to pecuniary externalities of kidney sales affect both those willing to sell their kidney (henceforth: 'the willing') and those unwilling to sell their kidney (henceforth: 'the unwilling'). Therefore, the unwilling cannot be said to have to pay a cost for their unwillingness to sell a kidney. To illustrate my point I will use Satz's example of kidneys as collateral for loans. However, the argument applies to all kinds of pecuniary externalities that are due to kidney sales.

Let us first reconsider how Satz attempts to show that pecuniary externalities are costs people have to pay for their unwillingness to sell a kidney. In the corresponding section of Satz's paper, she does not yet talk of costs but of available choices.[13] Satz seems to translate 'more costs' directly into 'less available choices'. Put differently, when the costs for some good or service X increase, then the available choices of those who want or need X decrease. The reason is that they are either not able to afford X anymore, or they are able to afford X but

[13] Satz, 'Ethical Issues in the Supply and Demand of Human Kidneys' 200.

are – due to the price increase – left with less money to afford other goods and services. Like Satz, I will use the concepts of *costs* and *choices* interchangeably in this paper. According to Satz, kidney markets expand the choices open to the willing while limiting the choices open to some of the unwilling. In fact, this seems to be true if we accept the assumption that kidneys are used as collateral for loans and thereby decrease the overall loan costs for the willing while increasing – due to pecuniary externalities of the collateral practice – the overall loan costs for some of the unwilling.

But Satz seems to overlook that pecuniary externalities of kidney sales could also cause costs for some of the willing, even though their *overall* loan costs decrease. For, even if you use your kidney as collateral, you could be affected by pecuniary externalities of transactions where other people use their kidney as collateral. The crucial difference is that the willing will most likely be overcompensated for their costs. This is because their monetary benefits from using the own kidney as collateral will usually be higher than their monetary costs due to pecuniary externalities of kidney sales. However, both the willing and the unwilling carry the costs of pecuniary externalities of kidney sales. Since this might be counterintuitive at first, consider the case of Bob. Bob wants to apply for a loan in a region where using kidneys as collateral is a wide spread practice. Because the collateral practice is widespread, at least some other people will use their kidney as collateral and will thereby decrease the amount of loans available to all others. Bob has to pay the costs which result from this decrease in available loans. However, he can decide to use his own kidney as collateral to decrease his loan costs. This benefit would most likely overbalance the costs which he has to pay due to pecuniary externalities of transactions where others use their kidney as collateral. The case can be illustrated as follows:

	Costs due to pecuniary externalities of transactions where others use their kidney as collateral	Benefit because own kidney is used as collateral	Overall costs/benefits due to the collateral practice
Bob unwilling	-1 Euro	0 Euro	-1 Euro
Bob willing	-1 Euro	+100 Euro	+99 Euro

But after all, some of the unwilling still have to pay a cost because of kidney sales. So what does all this mean for Satz's pecuniary externalities argument? My point is that if both the willing and the unwilling carry the costs of pecuniary externalities of kidney sales, then the unwilling cannot be said to have to pay a *cost for their unwillingness to sell a kidney*. Instead, both the willing and the unwilling have to pay a cost because there is the possibility to sell a kidney. Therefore, if people were affected by the (additional) pecuniary externalities of a legal kidney market, this would be best understood as having to pay a *cost for having a legal kidney market*. Accordingly, it is a different question which we need to ask in order to answer the *normative* question whether pecuniary externalities count in favour of a ban on kidney sales. Instead of asking 'Should people have to pay a cost for the unwillingness to sell a kidney?'[14] we need to ask 'Should people have to pay a cost for having a legal kidney market?'

This question reveals that, from a moral point of view, there does not seem to be anything special about pecuniary externalities of kidney sales. If pecuniary externalities are costs people have to pay for having a legal kidney market, then they are only one cost factor beside other, much greater cost factors of a legal kidney market. Consider for example a scenario in which a legal kidney market is introduced and the additional health care costs are paid by the public.[15] In this case, costs like the costs for buying kidneys will be paid by the society as a whole. My point is that these costs are not crucially different from the costs which are due to pecuniary externalities of kidney sales. First, the additional health care costs are also costs people have to pay for having a legal kidney market. Second, these costs are also to be paid by the willing *and* the unwilling. Third, also in case of these health care costs the willing are overcompensated for their costs (due to the money they receive from selling a kidney) while the unwilling are not.

[14] Satz, 'Ethical Issues in the Supply and Demand of Human Kidneys' 201.

[15] At least in the western world this is the most likely policy option in case the government stops banning kidney sales.

If costs due to pecuniary externalities of kidney sales are not crucially different from other costs which people would have to pay for having a legal kidney market, then they seem to be of no special relevance for the question whether we should ban kidney sales. This is because the costs due to pecuniary externalities of kidney sales will be negligibly small as compared to the overall costs which a legal kidney market will cause for the society. Furthermore, costs for the introduction of a legal kidney market are, for good reasons, generally not considered important moral or practical reasons against the legalisation of kidney sales. First, it is very likely that these monetary costs will be outweighed by the monetary savings which could be realised due to the introduction of kidney markets.[16] Second, even if the legalisation of kidney sales would cause considerably higher monetary costs than monetary benefits, this is not by itself a strong reason against legal kidney markets. After all, we *should* be willing – and usually *are* willing – to pay a cost to save human lives. Accordingly, pecuniary externalities constitute only one tiny cost factor beside other much greater cost factors of the legalisation of kidney sales, which are generally not considered morally or practically strong reasons against the legalisation of kidney sales. Thus, pecuniary externalities do not seem to be relevant for the question whether we should ban kidney sales.

Conclusion

In this essay I raised two objections to Satz's pecuniary externalities argument. First, I criticised the most important normative claim underlying her argument. Satz claims that it might be wrong to make people pay a cost for their unwill-

[16]For instance, it was calculated that in the US the Medicare costs for a renal transplant and immunosopression for 20 years was 311472 USD as compared to 530746 USD for dialysis patients with a 10-year median life span (see: Yen et al, Cost-effectiveness of extending Medicare coverage of immunosuppressive medications to the life of a kidney transplant 1703–1708). The difference which amounts to more than 200000 USD per patient could potentially be saved if there were enough kidneys available for transplantation.

ingness to sell a kidney. I argued that these costs are not wrong by themselves but would only be morally problematic if they coerced people to sell a kidney. As such, pecuniary externalities are only one tiny cost factor beside other much greater cost factors which might coerce the poor to sell a kidney. Second, I criticised one crucial empirical claim underlying her argument. Satz claims that pecuniary externalities of kidney sales might make some people pay a cost for their unwillingness to sell a kidney. I argued that pecuniary externalities of legal kidney markets are not costs people have to pay for their unwillingness to sell a kidney but best understood as costs for having a legal kidney market. As such, pecuniary externalities are only one tiny cost factor beside other much greater cost factors for the introduction of a legal kidney market. Hence, Satz's argument fails: pecuniary externalities of kidney sales cannot be said to be of any special relevance for the question whether we should ban kidney sales.

References

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Nico Tank is a BA student in Philosophy and Economics at the University of Bayreuth (2010 - 2014). His main areas of interest are in applied ethics, political philosophy and philosophy of science. In October he will start working as a political analyst for Rambøll Management Consulting in Berlin. You can contact him at [nico.tank@hotmail.de].