

Kidney Sales (Exploitation, Autonomy, and Consent)

The average wait time for a kidney transplant is between 3-5 years. Each year, between 3,000 and 4,000 people in the U.S. die waiting for a transplant. That's about 10 people each day. If we allowed people to freely SELL their extra kidneys, we could certainly save lives. It would be a win-win situation, where donors could get a lot of needed cash, and recipients' lives would be saved. Kidney *donation* is universally accepted. And yet, the *sale* of organs from living donors is illegal in every country except Iran. Why?

1. Valid Consent: The primary argument against allowing kidney sales is that the seller could never give their valid/legitimate consent to such a transaction.

*Note that exactly the same argument is made against a number of other transactions: For instance, **prostitution, sweatshop labor, and commercial surrogacy** (this is where a woman is paid to go through pregnancy and deliver a baby for a surrogate).*

Typically, it is thought that, in order to legitimately consent to something, one must:

- (a) **freely make the decision;** (for instance, someone who is coerced into a contract—e.g., held at gunpoint—cannot enter into a valid contract)
- (b) **be a competent decision-maker;** (for instance, two-year old children or severely cognitively disabled individuals are not capable of entering into valid contracts)
- (c) **be reasonably informed about what one is agreeing to**

First, note that we it is LEGAL to DONATE a kidney for no money (*as well as have sex, or donate the use of one's womb as a surrogate, etc.*). So, clearly the presumption is that consent to such activities can be valid when done without compensation. But, somehow, once money enters the picture, the legitimacy of the consent is said to disappear.

Second, note that, if consent to sell one's kidney cannot be valid, then it must lack one of the three features above. Let's look at each in turn.

- (a) **Voluntariness:** Clearly, being opened up and having an organ being taken out is probably not something that people WANT to do for its own sake. (*Nor are, presumably, prostitution or sweatshop labor.*) So, as stated, those who "agree" to such a procedure will likely be people who are impoverished, or facing dire

circumstances. This causes us to question whether such a transaction could ever be voluntary (i.e., truly, freely chosen) for two reasons:

An Offer You Can't Refuse: A free or voluntary choice is typically thought to be one where the agent could have done otherwise. But, the alternative to selling a kidney (whether it be homelessness, or not being able to afford your daughter's leukemia treatment, or whatever) will, for many would-be sellers, be so terrible that the offer of money will be IRRESISTIBLE. In short, there will be no *reasonable alternative* to selling a kidney. Therefore, such a choice could never be truly free. As Radcliffe-Richards puts it, the idea is that, "If the offer is impressive it leaves you with *very little choice* about whether to accept it, and if it is impressive enough it leaves you with *no choice* at all." (7) Thus, consent is absent.

Reply: Radcliffe-Richards points out that, if this line of reasoning were correct, then one could not truly consent, or freely choose to do the following:

- Marry someone who is perceived as amazing compared to everyone else

But, perhaps selling a kidney is different because having a kidney removed is, in itself, a bad experience that most would not want. It is ONLY the money that makes such a decision attractive. In reply, we can supply more counter-examples:

- Accept a dreary job for a good salary
- Sell something that you didn't really want to part with for a lot of money
- Decide to jump into a treacherous, frozen stream to save your drowning child

It doesn't matter that having a kidney removed is undesirable in and of itself. For, it is still ALL-THINGS-CONSIDERED desirable if you are paid the right sum. (*And the same could be said of prostitution, sweatshop labor, etc.*) If the mere fact that you were made "an offer you can't refuse" rendered a choice involuntary, hardly any of our choices could be considered voluntary, and that is absurd.

The Coercion of Poverty: Perhaps it is not the mere fact of the benefits being too attractive to pass up that removes autonomy, but rather the underlying POVERTY that motivates the choice in the first place. The worst off individuals in society will be willing to "consent" to things that (probably) none of the rest of us would. Thus, offering them money to do things that no one would want to do unless they too were in such dire circumstances runs the risk of **exploiting the poor** by taking advantage of the fact that they are **coerced by their poverty** into undesirable agreements. She writes,

“Coercion by circumstances ... involves a situation in which you consent to something intrinsically undesirable because it is the best of a severely limited range of options. ... Poverty, it may be claimed, is like the bullies and the kidnapper, in making the victim choose what other people, ‘affluent fellow-citizens’ with a wider range of options, would not choose.” (9-10)

Reply: But, can poverty really be coercive? With true coercion, an agent restricts your options in order to bend your will to his own ends, for his own benefit. If that agent were absent, you’d have MORE and BETTER options. But, with the offer of money for a kidney (*or sex, or long hours of poorly paid labor, etc.*), the agent who benefits by your agreement has EXPANDED your options by making the seller an offer that is better than all of her other options. If that agent were absent, you would have FEWER and WORSE options.

So, clearly it is not the AGENT that is doing the coercing. Instead, what is said is that the POVERTY is doing the coercing. If that poverty were absent, you would (presumably) have MORE and BETTER options available to you. But, can a non-agent such as poverty or desperation really be considered a coercer? **If it was, then pretty much EVERYTHING the poor or desperate do would be non-consensual, right?**

[A couple of routes we might explore?: (1) The “coercer” is society as a whole? Perhaps all of the privileged are to some extent obligated/at fault, because they are systematically profiting off of the misfortunes of the disadvantaged? If so, perhaps there is no consent. (2) Perhaps there IS consent, but it is wrong for the well-off to take advantage of someone’s desperation by profiting off of their misfortune in an unfair way? (*This unfairness, or disproportionality between the benefits that go to either side of the agreement may seem especially obvious in the case of sweatshop labor.*) But then, perhaps there is some price that IS fair, if it is costly enough to the “exploiter”? Would there still be exploitation if we paid sweatshop laborers, prostitutes, kidney sellers, etc. a lot more money?]

Conclusion: Imagine that someone IS in a really desperate situation. They are about to have their home taken away, or lose their child to a fatal illness, etc. If that person’s situation is so dire that they decide to resort to selling an organ, then selling their organ is perceived to be their BEST alternative. In effect, then, prohibitionists are suggesting that we take away this person’s BEST option. Truly, you are saying “No. I’d rather that this person lose their home or their child,

instead of their kidney—AND I'd rather that the recipient of the kidney die of kidney disease." Radcliffe-Richards writes:

"Trying to end exploitation by prohibition is rather like ending slum dwelling by bulldozing slums: it ends the evil in that form, but only by making things worse for the victims. If we want to protect the exploited, we can do it only by removing the poverty that makes them vulnerable, or, failing that, by controlling the trade." (16)

If we are truly concerned about such situations, she says, then prohibition of kidney sales would be the **WORST** way to go about making the situation better. We should be working to eradicate POVERTY and disasters that lead to such dire circumstances, rather than trying to prevent this possible means of people being able to get themselves out of such a situation by themselves. She writes,

"If you are concerned by someone's being forced by constricted circumstances into making an intrinsically unwelcome choice, you cannot improve the situation by taking away the best of their options and leaving them with something even less welcome." If kidney sales are prohibited, then, "To the metaphorical coercion of poverty is added the coercion of the supposed protector, who comes and takes away (what the prospective vendor sees as, and what may indeed well be) the best option that poverty has left." (10-11, 14)

*As an example of how this same justification is given for **sweatshop labor**, consider [this video](#) by UC San Diego philosophy professor, Matt Zwolinski. His primary defense of supporting sweatshops is that, even though working in a sweatshop is clearly undesirable, if we boycott them, then sweatshop factories will close down—leaving its employees even **WORSE** off than they were while working at the factory.*

*The problem of exploitation becomes especially difficult when the supposedly exploited individuals seem to have **consented** to the exploitation, which is itself **mutually beneficial** to both the exploiter and the exploited.*

- (b) **Competence:** Surely, if one can be deemed competent enough to legitimately consent to donating a kidney, then this same person would be competent enough to SELL it as well. Or, at least, if incompetence were a reason for prohibiting kidney sales, this must be assessed on a case-by-case basis—it surely would not justify UNIVERSAL prohibition.

But, even if one WERE deemed incapable of making rational, fully informed decisions, one might still favor kidney sales if they had paternalistic inclinations. Radcliffe-Richards, writes,

“You might rather think ... that the poorer you were the more rational it would be to risk selling a kidney, and that even if you were not competent to make that decision yourself a benevolent paternalist might well, in principle, push you in that direction.” (7)

Those who are willing to sell an organ out of their body are likely facing dire alternatives. Simply put, it would likely be in their own best interests to receive money in exchange for a kidney in order to avoid such alternative harms—whether or not that person is competent enough to make such a decision.

- (c) **Informed:** Having a kidney removed is not ENTIRELY without risk. About 1 in 3000 donors die in surgery, and about 1 in 100 experience health complications of some sort. (*Note that prostitution, sweatshop labor, and surrogacy are also not without their own risks.*) Some object that would-be kidney sellers will not stop to become fully informed, or that corrupt profiteers will withhold information about the potential risks, etc. Thus, their “consent” to the procedure would be invalid.

Reply: The fact that kidney sellers will potentially be uninformed does not imply that we ought to ban the practice altogether. It only implies that potential sellers should be required to undergo counselling to ensure that they are given all of the relevant information. Furthermore, if this reason were a reason not to allow people to SELL kidneys, then it would also be a reason not to allow people to DONATE kidneys—since both procedures are identical, and so run the same risks, and have the same consequences.

People should be free to take on risks, if they want to. For instance, we allow people to go hang-gliding (1 in 560 chance of death) or mountain climbing (1 in 1750 chance of death), if they want to (albeit with some regulation, waivers, etc.). Surely, selling an organ is no more dangerous; and the fact that MONEY exchanges hands in the transaction should make it no more worrisome. (Even driving a car comes with a 1 in 6700 chance of death.)

In fact, it is probably even MORE dangerous to ban it, since this encourages ILLEGAL organ harvesting and selling.

2. Other Objections: Here are some other objections raised against kidney sales:

- (a) Unfairness: It seems unfair to allow the rich to have access to this option of purchasing a kidney, when the poor will never be able to afford it.

Reply: But, if that were true, then ALL of the various treatments that only the rich have access to would be unfair, and so should be illegal—for instance, access to the best doctors, the best and most expensive treatments, etc. Surely, this is not the case?

- (b) Undermining Medicine: Allowing organ sales would undermine the medical profession, since then it would become profit-driven.

Reply: This would mean that ALL private practices should be banned, since they are ALREADY profit driven.

- (c) Removal of Altruism: Allowing kidney sales would both reduce the number of kidney donations, and also remove the altruistic aspect of saving someone else's life with your organs. It is good for people to save other's lives for noble, altruistic reasons—not for selfish ones (e.g., personal gain or profit).

Reply: First, even if kidney sales were legalized, kidney donations would still be permitted. Second, even if money exchanges hands, this does not mean that altruism is absent. For instance, what if the reason that I am selling my kidney is to put my children through college, or to be able to feed them (in addition to wanting to save the recipient's life)?

- (d) Coercion: There is a worry that, if kidney sales are legalized, some would be coerced by others into selling their organs.

Reply: But, then, the same worry would apply to legalizing kidney DONATION. Can't someone be coerced into "donating" a kidney?

- (e) Slippery Slope: If we allow kidney sales, then pretty soon people will be selling all sorts of other organs—even ones that would kill them, such as hearts.

Reply: First, we already allow kidney donations, and no one is asking to sacrifice their own lives by donating their hearts to their loved ones. Second, we could simply prohibit the sorts of organ sales that would end the life of the seller.

- (f) Commodification: Selling kidneys treats the human body (or parts of it) as a commodity; that is, as a thing to be bought and sold. But, human beings are inherently valuable beings, and treating them as commodities is morally wrong.

Reply: People sell parts of themselves all the time, and this has not led society to view human beings as commodities. For instance, eggs, sperm, blood, plasma, hair, etc. Even labor is a form of selling one's self (namely, one's time and effort) as a commodity for money. Furthermore, none of these practices seem to be morally wrong. How would kidney sales be any different?

Question: Perhaps kidney sales are different because kidneys are irreplaceable?

Radcliffe-Richards concludes that we should reconsider the ban against organ sales.

[Consider your final verdict on kidney sales. Does this same verdict apply to prostitution, sweatshop labor, commercial surrogacy, etc., as well? For instance, if we conclude that kidney sales are acceptable, must we also accept that these other forms of commodification are acceptable? Why or why not?]