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Commodification, Inequality, and Kidney Markets[1]

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ABSTRACT: People tend to be repulsed by the idea of cash markets in kidneys, but support the trading of kidneys through paired exchanges or chains. We reject anti-commodification accounts of this reaction and offer an egalitarian one. We argue that the morally significant difference between cash markets and kidney chains is that the former allow the wealthy greater access to kidneys, while the latter do not. The only problem with kidney chains is that they do not go far enough in addressing equality concerns, and we show how the introduction of cash payments by the state could remedy this.

KEYWORDS: Commodification; Equality; Egalitarianism; Markets; Kidney Exchange; Justice; Health Care.

Introduction

In the United States alone, there are over 100,000 people waiting to receive a kidney for transplantation.[2] On average, thirteen Americans die each day while waiting for a kidney transplant.[3] Finding ways to increase the number of live kidney donations could save many thousands of lives. By and large, people tend to be repulsed by the idea of markets in human organs, despite the fact that they could significantly increase supply.[4] To circumvent this

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[2] National Kidney Foundation, "Organ Donation and Transplantation Statistics" (New York: National Kidney Foundation, 2017), online at https://www.kidney.org/news/newsroom/factsheets/Organ-Donation-and-Transplantation-Stats.

[3] Ibid.

[4] A recent survey of Canadians found that, of those who originally said they would not consider a live kidney donation, over half said they would consider donating a kidney to a relative for $10,000 CAD. Lianne Barnieh, Scott Klarenbach, John S. Gill, Tim Caulfield, and Braden Manns, "Attitudes Toward Strategies to Increase Organ

repugnance, Alvin Roth and his colleagues have championed the idea of paired kidney exchanges, where two patients, each with a willing but incompatible donor who is nonetheless compatible with the other patient, simply swap kidneys.[5] With an unpaired donation to kick things off, it is possible to link these paired donations in long chains—the longest such chain so far consisting of 68 people, including 34 donors and 34 recipients.[6] Kidney chains are gaining rapid support from the medical community and the public at large.[7]

What Roth and his colleagues have created through their paired kidney exchange program is effectively a barter market for kidneys—a market where a kidney is purchased through payment in kind rather than in cash.[8] To be sure, kidney chains are markets of a special kind; they are what Roth calls "matching markets," in which buyer and seller have to choose one another.[9] Matching markets are unlike commodity markets in that participants must be matched along dimensions other than just price. In the case of kidney chains, for example, it matters that each kidney is a blood and tissue match for its intended recipient. This difference notwithstanding, the social benefits of kidney chains flow from the same source as the social benefits produced by markets generally: they are the result of an ordinary gain from trade. The fact that people have different wants and needs means that welfare gains can be realized simply

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Donation: Views of the General Public and Health Professionals," *Clinical Journal of the American Society of Nephrology* 7, no. 12 (2012): 1956-1963.

[5] Alvin E. Roth, Tayfun Sonmez, and M. Utku Unver, "Kidney Exchange," *Quarterly Journal of Economics* 119, no. 2 (2004): 457-488.

[6]Josh Gardner, "World's Longest Kidney Chain Saves 34," *Daily Mail*, April 14, 2015, online at http://www.dailymail.co.uk/news/article-3038456/World-s-longest-kidney-chain-saves-34-lives-linking-donors-San-Diego-Boston.html

[7] Most notably, the American Society of Transplant Surgeons has just issued a position statement endorsing global kidney exchange. American Society of Transplant Surgeons, "ASTS Position on Global Kidney Exchanges" (October 2017), online at http://asts.org/advocacy/position-statements#.WfdR_2Pw_-Y.

[8] We will use the terms 'kidney chain' and 'kidney exchange' interchangeably throughout.

[9] Alvin Roth, *Who Gets What—and Why: The New Economics of Matchmaking and Market Design* (New York: Houghton Mifflin Harcourt, 2015), pp. 5-6.

by shuffling around a fixed stock of goods.[10] For example, if you prefer apples to oranges and I prefer oranges to apples, then trading my apple for your orange makes both of us better off. In the case of a paired kidney exchange, considerable market manipulation is required to find the right match between buyer and seller, and medical intervention is needed to pull off the swap, but the benefits derive from the same underlying mechanism.

If kidney chains are indeed a kind of market, then what explains their widespread support, despite equally widespread repugnance at the idea of cash markets for kidneys?[11] In Part 1 of this paper, we consider and reject possible answers from anti-commodification theorists. Some anti-commodification theorists object to the encroachment of market norms on altruistic spheres of human relations. We show, however, that the same norms can operate in kidney chains as in other kinds of markets; objections to market norms condemn barter markets and cash markets alike. Another explanation comes from anti-commodification theorists concerned specifically with the corrupting effects of cash, either on the good itself or the agent who sells it. But we reject these arguments on the grounds that they cast their net either too widely or too narrowly to condemn cash markets in kidneys but not kidney chains. We therefore deny that anti-commodification arguments can ground a preference for kidney chains over cash payments, and go on to offer an alternative account.

We argue in Part 2 that repugnance at cash markets in kidneys is best understood not in anti-commodification terms, but in egalitarian ones. The problem with cash markets in kidneys is

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[10] Joseph Heath, "The Benefits of Cooperation," *Philosophy & Public Affairs* 34, no. 4 (2006): 313-351, p. 321.
[11] For a discussion of repugnance regarding kidney markets see Alvin Roth, "Repugnance as a Constraint on Markets," *Journal of Economic Perspectives* 21, no. 3 (2007): 37-58; Janet Radcliffe Richards, "Nephrarious Goings On: Kidney Sales and Moral Arguments," *Journal of Medicine and Philosophy* 21, no. 4 (1996): 375-426; James Stacey Taylor, "Moral Repugnance, Moral Distress, and Organ Sales," *Journal of Medicine and Philosophy* 40, no. 3 (2015): 312-327.

that they would allow the wealthy to leverage their greater economic advantages into greater access to kidneys; for that reason, they are profoundly inegalitarian.[12] In kidney chains, where the only thing that can buy a kidney is another kidney, background inequalities in income and wealth are effectively neutralized, as the rich are not in general more likely to have a willing donor on hand than the poor. But if this egalitarian explanation is right, then the only problem with kidney chains is that they do not go far enough. Entry into a paired kidney exchange still depends on having something of value to stake—a kidney—which is something that many individuals do not have. We argue that this unfairness could be remedied if the state were to purchase kidneys for a fixed cash price and distribute them to those who lack a willing donor. If people's aversion to unfettered markets in kidneys is really grounded in fairness rather than anti-commodification concerns, then our proposal represents a step forward despite the introduction of cash payments. We conclude in Part 3 by replying to some objections to our proposal.

Part 1: Cash Transfers and Market Norms

Anti-commodification theory offers what looks to be a plausible account of why cash-based kidney markets inspire repugnance while kidney chains do not. Indeed, it offers a variety of such accounts, which we will explore in turn. The most prominent anti-commodification argument is the one we will call *normative corruption*, according to which markets have a tendency to corrode moral norms along with the social relationships such norms are meant to govern. According to the normative corruption argument, the competitive norms of the

[12] Joseph Heath, "Review of Debra Satz's *Why Some Things Should Not Be for Sale,*" *Erasmus Journal for Philosophy and Economics* 4, no. 1 (2011): 99-107 at 101; Debra Satz, "Response: The Egalitarian Intuition," *Boston Review* (May/June 2012), online at http://bostonreview.net/archives/BR37.3/ndf_debra_satz_markets_morals.php

marketplace are said to crowd out the norms of beneficence in accordance with which, or with an eye to which, certain important goods should be shared. Market exchanges are inherently competitive, according to this view; in them participants seek to promote their own self-interest, and as a consequence, goods are allocated in accordance with ability to pay rather than according to need. Market norms are thereby said to be incompatible with altruism and solidarism. These concerns are captured by (and grounded in) the work of Richard Titmuss, who concluded from his multi-decade study of paid versus unpaid blood donation that the introduction of markets into the distribution of something as intimate as the human body "represses the expression of altruism…and erodes the sense of community."[13]

In this vein, Michael Sandel argues that we erode the bonds of civic fraternity when we allow the market to determine what goods are truly worth, and with whom they should be vested, shared, and enjoyed.[14] Elizabeth Anderson argues, along similar lines, that the self-interest and impersonality of market transactions erode the beneficence and reciprocity that enable us to enjoy the goods essential to our personal and civic relationships.[15] According to Michael Walzer, markets are problematic to the extent that they violate the social meaning of essential goods by distributing them not on the basis of another's need, but rather on the basis of the other's ability to pay for them.[16] On these accounts, to allow kidney donation to become a market transaction is to allow a paradigmatic act of altruism – one undertaken solely for the sake of meeting another's need – to become instead an act of bare self-interest. Accordingly, if we find kidney sales

[13] Richard M. Titmuss, *The Gift Relationship: From Human Blood to Social Policy*, Ann Oakley and John Ashton, eds. (New York: New Press, 1997), p. 314.
[14] Michael J. Sandel, "What Money Can't Buy: The Moral Limits of the Market," *Tanner Lectures on Human Values* 21, Grethe B. Peterson, ed. (Salt Lake City: University of Utah Press, 2000), pp. 105-122.
[15] Elizabeth Anderson, "Ethical Limitations of the Market," *Economics and Philosophy* 6, no. 2 (1990): 179-205, pp. 180-185 and 192-201.
[16] Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1984), pp. 6-26.

repugnant, what puts us off is supposedly the encroachment of the market into an altruistic sphere of human relations.

There are a number of problems with the normative corruption argument. For one thing, not all market transactions are necessarily self-interested in the sense of selfish. While someone may sell a kidney in order to earn money, he may need that money to pay for his child's operation.[17] Indeed, thinking further along these lines, it may be that compensating kidney donors would actually *increase* the expression of altruism, since without compensation many willing donors may not be able to afford the time off work required to recover from surgery. We would suggest that policing the motivations behind actions with decidedly positive outcomes is in equal measure Pareto sub-optimal, paternalistic, and perfectionist.

But having said that, we can bracket the question of whether markets truly impede or increase the expression of altruism. This is because, for our purposes, there is a more fundamental problem with normative corruption arguments. The more fundamental problem is that, since normative corruption arguments focus on the corruptive effects of market norms in general rather than on the effects of cash in particular, these arguments will have to condemn kidney *exchanges* to precisely the same extent that they condemn kidney *sales*. They are effectively unable to provide a principled reason for approving of kidney chains while condemning cash markets in kidneys.

Kidney chains are themselves markets of a sort, as we have seen, and thus they are very much governed by the norms of the marketplace. Participants in kidney exchanges pursue their own interests and exchange goods based on ability to pay in precisely the same way that

[17] Radcliffe-Richards, "Nephrarious Goings On: Kidney Sales and Moral Arguments," p. 377.

participants in any other market transaction do. This fact is perhaps obscured because, before any kidney exchange can take place, at least two people must be prepared to donate their kidneys to friends or family members in need. A live kidney *donation* is typically (though not necessarily) an altruistic act, but it is also quite separate from the subsequent kidney *exchange*.

If a donor's kidney is not a match for its intended recipient, then the pair must enter the kidney "marketplace," so to speak. In the marketplace, the pair is not looking to help a stranger in need; they are seeking to gain from an impersonal trade. After all, if the goal was merely to donate a kidney to a stranger, the whole apparatus of the kidney chain would be superfluous; participants could have done that on their own. Instead, what the pair wishes to do is to secure a gain from trade, in the form of a kidney for *themselves*. Helping a stranger in need is, at best, a welcome side-effect, and this should be clear from the fact that, from each donor's point of view, helping a stranger in need is neither a necessary nor a sufficient condition for her donation to take place.

For reasons like these, a recent *New York Times Magazine* article attributing the benefits of kidney chains to "sophisticated software, combined with old-fashioned selflessness," is actually quite misleading.[18] Old-fashioned selflessness can perhaps explain the presence of willing donors, but the specific benefit of kidney chains comes from old-fashioned *catallaxy*. It is trade, not selflessness, that bridges the gap between willing donors and incompatible recipients.

We want to be very clear that we are not claiming that participants in kidney chains must necessarily be *selfish* in the ordinary sense of that word. This is not true of kidney chains any more than it is true of cash markets. (Again, I might sell something for cash in order to pay for a

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[18] Malia Wollan, "The Great American Kidney Swap," *New York Times Magazine*, April 30, 2015, online at https://www.nytimes.com/2015/05/03/magazine/the-great-american-kidney-swap.html.

child's medical care; is the sale therefore a selfish act?) It is true that, through trade, participants seek to advance *their own* interests. This is what distinguishes a trade from a mere gift—with trade, both parties get something they want.[19] But the fact that exchange enables people to advance their *own* interests does not mean that trade enables people to advance only their *selfish* interests. Whether an agent's interest is selfish depends on its *content*, not on the mere fact that it happens to be an interest of the agent's own.[20]

This is actually a crucial ambiguity in many normative corruption arguments. Normative corruption theorists are correct that all market exchange is self-interested, but only if "self-interest" is understood in a very thin sense. Market exchange necessarily advances the interests *of the parties involved*; otherwise it would not occur at all, unless perhaps we are prepared to imagine that parties act for no reason. But it does not follow from this that all market exchange is necessarily self-interested in the sense of *selfish* and therefore morally suspect. It does not follow from the fact that trade advances participants' *own* interests that therefore it advances only their *selfish* interests.[21] And yet normative corruption arguments appear ready to endorse that inference, or at least to trade on the ambiguity.[22]

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[19] It may be that some people regard chains as preferable to cash payment because, in chains, it appears that the kidney donor does not actually get anything in return; the benefit goes to someone else, in the form of a kidney for the donor's loved one. Thus, it might be thought that the donor's altruistic motives are preserved in a way that they could not be if the donor were compensated. We think this is an arbitrarily narrow conception of what it is to "get something in return." The donor *does* get something she wants, in the form of a kidney for a loved one. Indeed, the donor would not be participating in the exchange unless securing a kidney for a loved one was important to her; if it were not important, she could have given a kidney to a stranger and been done. It is also worth noting that it is just as possible to *sell* your kidney to benefit another as it is to *barter* it for that purpose. Why should it be acceptable to *trade* your kidney in order to get a kidney for a loved one, but not to *sell* your kidney in order to get money so that you might buy a loved one something that they may need just as much?

[20] Joel Feinberg, "Psychological Egoism," *Reason and Responsibility*, Russ Shafer-Landau and Joel Feinberg, eds. (Belmont: Wadsworth, 2004), 183-195, p. 185.

[21] Ibid.

[22] Elizabeth Anderson, for example, moves quickly from the idea that individuals pursue their "individual interests" in market transactions to the conclusion that the market represents "an extension of the sphere of egoism." This ignores the possibility that individuals may have interests that are not egoistic in character. Anderson, "Ethical Limitations of the Market," pp. 182-183.

Our claim is that, in kidney chains, participants seek to advance their own interests in a way that is structurally indistinguishable from the way individuals advance their interests in other kinds of markets, including cash markets. Whether there is anything morally suspect about this or not, it does not serve to distinguish kidney chains from cash markets for kidneys. It is true that the particular interest at stake in kidney chains—namely, securing a kidney for a friend or family member in need—is not typically a *selfish* interest, by any means, but neither are the interests at stake in many cash exchanges. The fact that kidney chains allow participants to advance their own interests is an indispensable part of their appeal. It turns out that most people are not inclined to give a kidney to a stranger unless, by doing so, they can secure a kidney for a loved one in return; this is why kidney chains are beneficial in the first place.

This last point entails a further one, which is that kidney exchanges also quite obviously allocate kidneys on the basis of ability to pay rather than need alone. The fact that the payment comes in the form of another kidney should not obscure this fact. Someone who needs a kidney does not get one from a kidney exchange program on the basis solely of need. A person who does not have a friend or family member willing to stake them a kidney will not be able to participate in a kidney exchange; while their need may be dire, they must be able to stake a kidney to get one. In other words, while you can enter the market without cash, you cannot do so without paying a hefty price.

Recall that according to normative corruption theory, the norms in accordance with which a good is distributed can either preserve or negate its value. It is alleged that the value of certain essential goods (and health related goods in particular) can only be preserved when they

are distributed in accordance with a principle of need.[23] To distribute them instead on the basis of ability to pay is to alter, indeed to negate, their value. But if a particular good's value requires that it be distributed on the basis of need, it should not be acquired only by those who can barter for it, any more so than by those who can pay. For this reason, the normative corruption theorist who is opposed to the distribution of needed goods based on ability to pay should in principle oppose kidney exchange to the same extent that she opposes kidney sale.

In sum, if we are worried about the norms of the market encroaching on supposedly altruistic spheres of human relations, we should be just as worried about kidney chains as about cash-based kidney markets. Insofar as market exchange advances the interests of the participants involved and distributes goods according to ability to pay rather than need alone, this is true of barter as well as of cash exchange. Thus, because normative corruption worries identify the norms of self-interest and distribution by ability to pay as the problematic features of markets, they condemn kidney chains and cash markets in kidneys alike.

For these reasons, if anti-commodification arguments are going to account for the superiority of kidneys chains over cash markets for kidneys, they are going to have to attend to the problematic features of cash specifically. A number of anti-commodification arguments appear to do precisely this. On the following set of arguments, cash is claimed to corrupt either the very meaning of the good it buys, the inherent value of that good, or the dignity of the agent who sells it. We call these the *definitional corruption*, *quality corruption*, and *deontic corruption* arguments respectively. To be clear, each of these arguments could be read as an indictment of markets in general, in light of the norms in accordance with which they operate. But read this

[23] Walzer, *Spheres of Justice,* pp. 24-26.

way, they run afoul of our previous objection in that they would thereby condemn cash markets and chains alike. We are interested in *definitional, quality, and deontic corruption* arguments because on the most direct readings thereof, cash appears to be the relevant corruptive agent; this is precisely what we think needs to be shown to differentiate cash markets from kidney chains on anti-commodification grounds.

According to the *definitional corruption* argument, certain goods have meanings that cannot be preserved by cash acquisition. Consider friendship, the very meaning of which is such that it cannot be bought. The minute you try to acquire friendship with cash, you destroy the thing you seek by turning it into something else altogether. A bought friend is not what we call a friend, but a lackey.[24] And the same is true of love: if it is bought, we call it something else altogether. In fact, the meaning we attribute to such goods entails that they can only be acquired reciprocally. This may look to explain the appeal of kidney chains, which, after all, also demand that the relevant good be acquired only with more of its own kind. But the reason friendship must be acquired reciprocally, rather than with cash, is to preserve its very definition, and this is hardly true of kidneys. A kidney is still very much a kidney when acquired with cash; it functions the same way, serves the same end, and is referred to by the same name whether it is donated or sold. So although cash payments can alter the meaning of certain goods, this fact cannot explain our aversion to cash-based kidney markets.

The *quality corruption* argument holds that money can never capture the inherent value of that which it buys because it can never be truly equivalent to it. It was Aristotle who first introduced us to these worries when he argued that the value of a good is determined by its *telos*,

[24] It is possible we could be in the market for a lackey, not a friend. Definitional corruption arguments therefore depend on how we choose to characterize the good we seek. Fred Hirsch, *Social Limits to Growth* (Cambridge, MA: Harvard University Press, 1978), pp. 84-95.

or innate finale end. It follows from this that the value of a good cannot be captured or measured relative to any other good—not even cash, whose own telos lies in its being uniquely fungible.[25] This is the problem of incommensurability. And incommensurability may well explain the advantage of a swapping system over a cash based system of kidney acquisition. A kidney is, after all, the only thing teleologically commensurable to another kidney. From this perspective, then, a kidney can only be morally acquired so long as it is acquired with one of its own kind.

The problem with this argument, however, is that it does a great deal more than offer grounds for a system of kidney exchange over cash payment. On this argument it is not just kidneys but apples, haircuts, and iPhones that should be swapped rather than bought. If every good is incommensurable with every other good, no morally acceptable exchange is possible, even in principle, except the swapping of like for like. Aristotle himself saw the problem with this outcome and conceded that market values need not track moral values in order for an exchange to be just. He argued that if we want to have a just market, or indeed a market at all, we have to stop worrying about teleology. A market exchange will be just, he tells us, not so long as the value of two goods is *equal,* but *reciprocal* - or commensurate in terms of how badly each is needed – as determined by what people are willing to give up to get them.[26]

On the *deontic corruption* argument what cash threatens is the value of the vendor herself. For Kant, "what has a price can be replaced by something else as its equivalence; what on the other hand is raised above all price and therefore admits of no equivalent has a dignity."[27]

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[25] Aristotle, *Nichomachean Ethics*, Roger Crisp ed. and trans. (Cambridge, UK: Cambridge University Press, 2014) V.5: 1129a1-1134b25.
[26]Ibid, V.5: 1133a20-b25. See also Robert L. Gallagher, "Incommensurability in Aristotle's Theory of Reciprocal Justice," *British Journal for the History of Philosophy* 20, no. 4 (2012): 667-701, pp. 669-672.
[27] Immanuel Kant, "Groundwork of the Metaphysics of Morals," *Kant's Practical Philosophy,* Paul Guyer and Allan W. Woods, eds. (Cambridge, UK: Cambridge University Press, 1999): 4:434

The claim here is that the value of the human agent is degraded when she, or some essential part of her, is assigned a cash price. This is the claim offered by the WHO in its opposition statement to kidney sales.[28] On this account, kidney exchanges might be preferable to cash transfers precisely because they avoid ascribing a price tag to a person or to one of her essential parts. Assigning a price to an agent is indeed wrong because in so doing we treat her as a mere thing that can be subjected to the will of another. Slavery is incompatible with human dignity because it is incompatible with human agency.

But unlike our capacity for choice-making, a kidney is not essential to our humanity. So it is hard to see how assigning a price to a kidney violates human dignity or, therefore, why we should find an agent's autonomous choice to sell one so problematic. Moreover, the deontic corruption argument mistakenly treats cash payments as a stand-in for instrumental use. Using someone as a mere means is wrong, on the Kantian account, because we thereby fail to respect her agency. But while cash can certainly accompany using someone as a mere means, it need not: enslavement is wrong regardless of whether the slave is bought or gifted. Consider also that we typically pay people for their services precisely so as to *avoid* using them as a mere means: our house staff, to take a Kantian example, or anyone in our general employ.[29] Conversely, we can use people as a mere means in myriad ways without involving cash: when we make them a lying promise, as Kant said, or objectify them, as Nussbaum has argued.[30]

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[28] World Health Organization, "WHO Guiding Principles on Human Cell, Tissue, and Organ Transplantation," 2010. See Guiding Principle 5, online at http://www.who.int/transplantation/Guiding_PrinciplesTransplantation_WHA63.22en.pdf

[29] Immanuel Kant, *The Metaphysics of Morals,* Mary Gregor, ed. (Cambridge: Cambridge University Press, 1996), pp. 6:538-6:361.

[30] Martha Nussbaum, "Objectification," *Philosophy and Public Affairs* 24, no. 4 (1995): 249-291.

If using someone as a mere means is indeed the real worry, not commodification as such, then *deontic corruption* worries apply to kidney donation as much as to kidney sales. In both cases we use the body of another as a mere means to our end. If it is pointed out that donors consent to being so used, such that their ends are consistent with our own, then surely so do competent vendors. Of course, we might think that consent can be reasonably assured in the case of donation but not in the case of sale, because the circumstances of desperation from which many sales take place render them non-autonomous. This is an issue we consider in more detail in the final section of our paper. We propose that it is not the offer of payment that constrains an agent's capacity for choice and offends her human dignity, but rather the very desperation of her circumstances, which other moral agents fail to acknowledge and address.

Although anti-commodification arguments might look to yield plausible justifications for why kidney exchanges are preferable to cash markets, in fact they do not. *Normative corruption* arguments raise concerns about the potentially degrading effects of market norms, but as we have shown, these norms operate as much in kidney chains as in cash markets. On the normative corruption view, kidney chains are just as commodifying as cash markets, and so should inspire the same degree of repugnance. And yet they do not. *Definitional*, *quality*, and *deontic corruption* arguments identify cash as the problematic feature of markets, but either they recognize such a narrow category of cash exchanges as problematic that kidneys are left out, or they capture kidneys only by condemning cash exchanges of any sort. Thus they, too, are unable to account for the superiority of kidney chains over cash markets in kidneys.

The fact that providers of other bodily services are regularly compensated for their costs suggests that we do not find cash to be corruptive as such when it comes to the human body. Consider that although *paying* commercial surrogate mothers is illegal in Canada, the UK, and a

majority of U.S. states, *compensating* altruistic surrogates is typically not only permissible but expected. Surrogates are allowed to accept money to cover their living expenses, travel expenses, nutritional costs, medical treatments, recreational activities, etc. In other words, they can be paid for all the costs they incur during their pregnancy, just not for the pregnancy itself. But surely the distinction is an academic one if cash changes hands either way. Similarly, egg donors in the U.S. are paid, but payments are capped and in many states untaxed, suggesting that while there does seem to be a concern with allowing an open market for human eggs, it is not a concern with cash payment as such.[31] The difference between altruistic and commercial surrogacy, and between egg donation and egg sale, does not come down to the presence or absence of cash.

To argue that cash compensation is preferable to cash purchase because compensation does not invoke market norms is only to come full circle: if the objection is ultimately to the prevailing norms of the marketplace, then kidney chains must be condemned alongside cash markets. On the whole, we think it would be quite implausible to hold that acquiring kidneys for cash is unacceptably commodifying, even though trading kidneys is not; this would be like holding that even though selling sexual relations for cash is unacceptably commodifying, offering sex in exchange for goods and services is fine. Whatever might be objectionable about treating people or their parts as commodities, surely it is already present in barter. To the extent that kidneys chains are therefore indeed preferable to cash markets, it cannot be on anti-commodification grounds.

[31] Kimberly D. Krawiec, "Lessons from Law about Incomplete Commodification in the Egg Market," *Journal of Applied Philosophy* 33, no. 2 (2016): 160-177. As a result of the lawsuit Krawiec discusses on pp. 164-170, the ASRM price caps on egg donation have been deemed to violate American anti-trust law. See Kamakahi v. Am. Soc'y for Reproductive Med., ___ F.R.D. ___, No. 11-cv-01781-JCS, 2015 WL 510109 (N.D. Cal. Feb. 3, 2015).

Part 2: Chains and Equality

Our aim in this paper, recall, is to provide a justification for the very different moral reactions that people have toward kidney chains as compared to cash markets in kidneys. We do not deny that many people have strong anti-commodification reactions to markets in human body parts per se.[32] But if we are being consistent, these anti-market reactions should condemn kidney chains as much as cash markets in kidneys. This is because, as we have shown, kidney chains are themselves markets of a sort, and just as importantly, they exhibit many of the putatively objectionable features of markets. To actually *justify* rather than simply *explain* the widespread preference people have for kidney chains over cash markets, we need to focus on what makes kidney chains different from cash markets.

The presence of cash is the most obvious difference between kidney chains and cash markets for kidneys. In the previous section, we rejected anti-commodification theorists' accounts of *why* cash is particularly problematic. No anti-commodification account of what is objectionable about cash markets is able to cover the case of kidney markets without being so broad as to condemn all forms of cash exchange. Yet we do think that cash is the right place to look for the morally significant difference between cash markets for kidneys and kidney chains. The problem with cash, however, is not that it has a uniquely corrupting influence on whomever or whatever it touches. The problem with cash, we suggest, is simply that people have vastly different amounts of it.

[32] Interestingly, it should be noted that these reactions come from those on the both the right and the left of the political spectrum. See Stephen Leider and Alvin E. Roth, "Kidneys for Sale: Who Disapproves, and Why?" *American Journal of Transplantation* 10, no. 5 (May, 2010): 1221-1227.

Because our society is marked by massive inequalities in income and wealth, a cash market for kidneys would produce unjustifiable inequalities in access to kidneys. Those who are already well-off would be able to acquire kidneys with relative ease, while the poor could conceivably be shut out of the kidney market entirely. This is not only arbitrary but unjust, on any theory of justice in health care according to which health care resources should be distributed according to need rather than ability to pay.[33] In a kidney exchange, on the other hand, where the only thing that can buy a kidney is another kidney, these background inequalities in income and wealth are effectively neutralized. The rich are not in general more likely than the poor to have access to a friend or family member willing to donate a kidney. As such, they are not more likely than the poor to reap the benefits of kidney chains.[34]

We think that this provides a more compelling defense of the underlying intuition that kidney chains are acceptable while cash markets in kidneys are not. While people do not necessarily object to inequalities in wealth, they do tend to have strong reactions against inequalities in access to necessary goods.[35] And a number of influential egalitarian theories of justice in health care converge on the idea that health care should be distributed according to need rather than according to ability to pay.[36] From this point of view, the difference between kidney chains and cash markets for kidneys is clear: cash markets for kidneys would give the wealthy greater access to kidneys, while kidney chains level the playing field, so to speak, at

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[33] Norman Daniels, *Just Health* (New York: Cambridge University Press, 2008); Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge, Massachusetts: Harvard University Press, 2000), pp. 307-320; Shlomi Segall, *Health, Luck, and Justice* (Princeton: Princeton University Press, 2010).

[34] Heath, "Review of Debra Satz's *Why Some Things Should Not Be for Sale,*" 101; Satz, "Response: The Egalitarian Intuition."

[35] James Tobin, "On Limiting the Domain of Inequality," *Journal of Law and Economics* 13, no. 2 (1970): 263-277, pp. 263-264. See also: David Miller, *Principles of Social Justice* (Cambridge, MA: Harvard University Press, 2001), pp 77-78.

[36] See n. 33 above.

least between rich and poor. Kidney chains are thus preferable not for anti-commodification reasons, but rather on entirely egalitarian grounds.

However, if our preference for kidney chains over cash markets depends on egalitarian considerations, we must take into account that while kidney chains go much of the way toward addressing fairness concerns, they don't go far enough. Chains resolve one kind of inequality of access issue, but in doing so they create another. This is because, as we have already seen, chains too distribute kidneys according to ability to pay rather than according to need; in a kidney chain, someone must be able to stake a kidney in order to get one. Yet not everyone has a friend or family member willing to donate a kidney on their behalf.

Certainly, chains are an improvement compared to a world without them—i.e., compared to a world in which donations only take place when donors are a blood and tissue match to their immediate intended recipient. But many people simply don't have someone in their life willing to donate a kidney in the first place. And we would suggest that this inequality is not necessarily any less arbitrary than wealth inequality. The fact that someone has a friend or family member willing and able to donate, while another equally needy individual does not, should not determine kidney distribution any more than income and wealth should. If we accept the general egalitarian intuition that it is unjust for one person to be worse off than another through no fault of her own, then the former inequality should trouble us as much as the latter.

It might be argued that inequalities in access to willing donors are not morally arbitrary in the way that inequalities in income and wealth are. Someone might claim that those who have invested in enriching their personal and familial relationships deserve the myriad benefits those relationships offer. Even so, the connection between deep personal ties and access to kidneys is mediated by many morally arbitrary factors. For example, a person may cultivate friendships

with people who turn out to be unable to donate because of health reasons, or who are simply unable to afford the time off work. (Indeed, these considerations suggest that access to willing and able donors may indeed be correlated with income and wealth after all.) However much we might invest in fostering our family ties, we cannot attribute personal responsibility to persons who simply do not have (healthy) siblings, living parents, or children of a suitable age to donate. And since many forms of kidney disease are heritable, even well-loved people with large families may find themselves without any eligible donors at hand.[37]

Not having someone who is willing to donate while others do perhaps matters less from the point of view of justice than not being able to afford a kidney when others can, but this is no reason to think it shouldn't matter at all, or indeed that it shouldn't matter quite a lot. Inequalities in personal ties may be less egregious than inequalities in wealth, but they are nonetheless sufficiently arbitrary to provide inadequate grounds on which to defend unequal access to needed goods. We might think, for example, that arbitrary inequalities are only permissible provided they can be justified to those who draw the short end of the stick.[38] It is hard to see how two individuals who need a kidney would find it reasonable in the abstract that the allocation should depend on which of them turns out to have more money. They might arguably also find it unreasonable that the kidney should go to whomever of them turned out to have a kind-hearted sibling. At the very least, the sibling-based allocation is presumably unreasonable enough to be unjustifiable, even if not *as* unreasonable as the income-based allocation.

[37] There is also evidence showing that African-Americans are far more likely to suffer from kidney disease, yet far less likely than whites to get a kidney transplant. This suggests that members of particular communities may be less likely to find a willing donor from among their friends and neighbors, if other members of their community are themselves more likely to suffer (or to be suffering) from kidney failure. See Samuel J. Kerstein, "Kidney Vouchers and Inequity in Transplantation," *The Journal of Medicine and Philosophy*, 42, no. 5 (2017): 559-574.
[38] Thomas Scanlon, "Contractualism and Utilitarianism," *The Difficulty of Tolerance: Essays in Political Philosophy* (Cambridge, UK: Cambridge University Press, 2003): 124-150, p. 145.

How might we therefore address this particular issue of fair access? If we are right that our preference for kidney chains over cash markets derives from an egalitarian intuition, then the fact that kidney chains do not go far enough towards satisfying this intuition is not a reason to dispense with chains altogether; it is a reason to build on them. One reasonable option, consistent with our egalitarian argument, is for the state to get involved in acquiring kidneys for those who are otherwise unable to enter a kidney chain, and thus in effect to stake their cost of entry to a chain. That is, the state could acquire kidneys for people who want to participate in a kidney chain, but do not have a friend or family member willing to donate a kidney on their behalf. The proposal is therefore this: the state should acquire kidneys at a fixed cash price for the purposes of paying the entry fee to a kidney chain for those otherwise unable to participate in one.

There is good reason to think that even quite generous cash payments for kidneys would not place any strain on state health care budgets. Recent research in the Canadian context has shown, for example, that even on the conservative assumption of a modest 5% increase in supply, a cash payment of $10,000 CAD per kidney would yield savings to the health care system of $340 per patient, while also yielding the patient an additional expected .11 quality-adjusted life years; in other words, the strategy is both cost-saving and improves patient outcomes. A larger increase in supply would yield even greater per-patient savings, according to this study. [39]

The savings in the U.S. could be expected to be much more dramatic. A 2015 study estimated savings to taxpayers of over $400,000 USD per kidney recipient, even assuming a very

[39] Lianne Barnieh, John S. Gill, Scott Klarenbach, and Braden J. Manns, "The Cost-Effectiveness of Using Payment to Increase Living Donor Kidneys for Transplantation," *Clinical Journal of the American Society of Nephrology* 8, no. 12 (2013): 2165-2173.

generous payment to kidney donors of $45,000.[40] The much larger savings compared to the Canadian case are mostly due to the much larger cost of dialysis in the U.S. compared to Canada.[41] To be clear, the $400,000 in estimated savings per patient are only those savings that would accrue to taxpayers. In the U.S., Medicare has covered dialysis treatments regardless of patient age or income status since 1973, at a current cost of some $34 billion per year.[42]

The likelihood that our proposal would actually be cost-saving on net suggests that it does not raise troubling issues of resource allocation; paying cash for kidneys would likely free up more resources for use elsewhere in the health care system. We would conclude that the state's involvement in kidney acquisition for chain participation is justified by its interest in equalizing access to medically necessary health care.[43] Dialysis is not a long term solution to the problem of kidney failure, so it seems altogether uncontroversial to claim that a kidney transplant qualifies as medically necessary.

We want to be clear that we are not proposing a system where all kidney acquisition and allocation is performed by the state. Our proposal is rather that chains should continue to operate,

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[40] P.J. Held, F. McCormick, A. Ojo, and J.P. Roberts, "A Cost-Benefit Analysis of Government Compensation of Kidney Donors," *American Journal of Transplantation* 16, no. 3 (2016): 877-885.

[41] In fact, the huge differences in estimated savings between the Barnieh et al. study of compensating donors in the Canadian case and the Held et al. study of compensation in the US case seem to come down to three key factors. The first, already mentioned, is the far greater cost of dialysis in the U.S. compared to Canada ($121,000 USD per patient per year in the U.S., compared to $70-80,000 CAD per patient per year in Canada, multiplied over the expected life of the kidney transplant). The second is a difference in estimated uptake. The Held et al. study rather optimistically assumes that compensation of $45,000 US for a kidney would be sufficient to supply kidneys to all those currently waiting for one in the United States, while the Barnieh et al. study assumes a mere 5% increase in supply from compensation of $10,000 CAD. (The Barnieh et al. study states that a greater increase in supply would yield even greater savings, not just overall but indeed per patient.) Related to this, the third and final difference is that the Barnieh et al. study assumes that patients who suffer graft loss—i.e. patients whose transplant fails—would return to dialysis, with the higher costs that entails, while the Held study assumes that the state would simply purchase another kidney for transplant to those patients. Barnieh et al, "The Cost-effectiveness of Using Payment to Increase Living Donor Kidneys for Transplantation;" Held et al, "A Cost-Benefit Analysis of Government Compensation of Kidney Donors."

[42] Ron Shinkman, "The Big Business of Dialysis Care," *Catalyst*, June 9, 2016, online at http://catalyst.nejm.org/the-big-business-of-dialysis-care/

[43] See n.33 above.

busily increasing the number of live transplants over and above what can be achieved through altruistic donation. The government's role should be limited to assisting in the expansion of the donor registry, and guaranteeing that a needy person will have access to a chain even if she does not have a donor willing to stake her the cost of entry. This proposal therefore very much centers on preserving kidney chains, but also on expanding them to address a second kind of egalitarian concern.

Our solution introduces cash payments, certainly. But if we are right that the reason chains are preferable to cash markets has nothing to do with repugnance to cash per se but with repugnance to inequality, this strategy does not run afoul of the intuition with which we began, and should circumvent repugnance in precisely the same way chains do. In fact, evidence suggests that although people remain repelled by the idea of cash markets for kidneys, they are starting to come around to the idea of introducing financial incentives to increase supply.[44] This is precisely what we should expect if it is egalitarian rather than anti-commodification considerations that justify the preference for kidney chains and the repugnance for cash markets.

We also want to be clear, before proceeding to address potential objections to our view, that we do not regard our proposal as representing the requirements of ideal justice. Rather, this proposal is meant as a step in the right direction, given the non-ideal circumstances in which we find ourselves. Cecile Fabre has suggested that an ideal world would be one where no prophylactic line is drawn between our internal and external resources, such that kidneys over and above what we need (namely, one) would be "taxable" and, like our income, redistributed to

[44] Barnieh et al., "Attitudes Toward Strategies to Increase Organ Donation: Views of the General Public and Health Professionals."

those in greater need.[45] Alternatively, an ideally just arrangement might be one where sufficiently many individuals are spontaneously moved to donate their kidneys that payment or exchange becomes unnecessary altogether. We do not pretend to offer a claim here as to what kidney allocation should look like in the ideal world. Things being what they are, however, we think there are sound egalitarian reasons to increase supply, provided doing so does not exacerbate inequalities in our non-ideal world. This is what our proposal aims to do.

Part 3: Redistribution and Exploitation

We need to consider two objections to our view. The first objection is that the egalitarian intuition we appeal to might speak in favor of going even further in removing restrictions on the organ trade. According to this worry, our proposal doesn't go far enough in opening kidney markets to cash. The second objection is that our proposal goes too far. According to this second objection, from an egalitarian point of view, the real problem with cash payments for kidneys might be related to the exploitation of vulnerable sellers of kidneys rather than about ensuring equality of access for potential acquirers of kidneys. We take up each of these objections in turn.

The first objection has it that our view does not go far enough in removing restrictions on markets in kidneys. There is a well-known result in welfare economics according to which the best way to deal with inequality is through the redistribution of wealth rather than through the blocking or restricting of particular markets. Through redistribution and free exchange, we can have our cake and eat it too, so to speak: we can have an outcome that is *both* more equal *and*

[45] Cecile Fabre, *Whose Body is it Anyway? Justice and the Integrity of the Person* (Oxford, UK: Oxford University Press, 2008), pp. 99-109.

more efficient, rather than sacrificing the efficiency gains that come from market exchange for the sake of greater equality.[46]

What this result implies is that, if we are correct in our contention that objections to cash markets in kidneys are best understood as objections to *inequality*, the optimal solution would be to take care of the inequality through the redistribution of wealth, and then allow people to trade kidneys for cash on an open market. Or if cash redistribution is seen as undesirable or politically impossible, perhaps for paternalistic reasons, then a second-best alternative would be a cash market in kidneys supplemented with targeted assistance for the poor: means-tested vouchers or rebates, for example, or direct purchase by the state on behalf of poor citizens only. In either case, what would be called for is the creation of a private cash market for kidneys; the state's role would accordingly be limited to helping poor citizens procure a kidney, either through the direct redistribution of wealth or through more targeted forms of assistance.

We should say in the interest of fairness that the creation of a private cash market for kidneys coupled with redistribution or with targeted, means-tested assistance could have certain advantages over our proposal for kidney chains supplemented with state purchase. From the point of view of efficiency, the advantage of a cash market is that it ensures that the price of a kidney is set at a level where markets clear (meaning the level at which supply equals demand); the downside of the state simply setting a price is that it will almost certainly result in either a surplus or (more likely) a shortage of kidneys for transplant. From the point of view of equality, the advantage of markets combined with targeted assistance is that the state ends up helping only those citizens who truly need assistance, whereas under our proposal it buys kidneys for all those

[46] See Tobin's discussion in "On Limiting the Domain of Inequality," pp. 264-266.

who do not have willing donors to stake their way into a kidney chain, including those who could easily afford to buy their own.

We have two reasons for rejecting this proposal, and both are chiefly practical in nature. First, our aim is to preserve and build upon the success and popularity of the current exchange regime, and we are cautious of large changes that could upset it. The creation of a cash market for kidneys could have significant destabilizing effects on kidney exchanges. Indeed, the creation of a cash market seems less like a supplement to kidney chains and more like a replacement for them. Insofar as our proposal of state purchase represents a more modest change compared to the creation of a cash market, and one that would be somewhat easier to reverse if its real-world effects turn out to be negative on net, we think this is one significant reason to prefer it. In Richard Titmuss's famous study of paid versus unpaid blood donation, for example, he found an unexpected tendency on the part of paid donors to lie about their health conditions, resulting in countless spoiled samples (and, due to inadequate testing, the spread of Hepatitis C).[47] Unintended consequences of this sort may be equally hard to predict in an open kidney market and we are for this reason hesitant to endorse one.

In addition to the general reasons there are to favor incremental change, we believe there is an even more pressing reason to endorse our proposal for state purchase geared toward bolstering kidney chains over the creation of a full-fledged cash market for kidneys coupled with redistribution or subsidies. That reason is that the creation of a cash market may ultimately re-introduce inequalities in access to kidneys following on inequalities in income and wealth. While it is of course in theory possible to imagine a cash market for kidneys combined with sufficient

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[47] Titmuss, *The Gift Relationship,* pp. 260-73.

redistribution to insure equality of access, in practice what we are likely to end up with is the cash market without adequate redistribution. There may not be the political will to provide redistribution or vouchers sufficient to keep up with the market price of kidneys.

While we have said that there is good reason to think that cash payments for kidneys would actually save taxpayers' money, by reducing the need for expensive dialysis treatment, taxpayers are not accustomed to thinking about public assistance in those terms.[48] Moreover, if the market price of kidneys drifts high enough, taxpayers may have legitimate reason to worry that the costs of kidney-related redistribution will come at the expense of other important public services, including other health care services. Thus, what may begin as a cash market coupled with adequate redistribution might quickly become a cash market with inadequate redistribution, or even a cash market alone, and these are outcomes that we would not regard as desirable. From this point of view, the advantage of state purchase is that it insures that the price of kidneys remains at a level that can be seen by the public as mutually advantageous—as advantageous both to patients who receive a kidney for transplantation and to taxpayers who save money on dialysis treatment—and supported on those grounds.

Of course, our proposal may entail a certain amount of what economists call "deadweight loss." If we are assuming that the price for state purchase is set somewhat below the market-clearing price, then under our proposal there will still be a certain number of kidney exchanges that will not take place but that would have taken place if the price of kidneys had been allowed to rise to equilibrium. This is a general problem that arises whenever markets are restricted or blocked, not a particular problem for our view. But we would say that we regard some loss in

[48] Barnieh et al, "The Cost-effectiveness of Using Payment to Increase Living Donor Kidneys for Transplantation;" Held et al, "A Cost-Benefit Analysis of Government Compensation of Kidney Donors."

economic efficiency as a reasonable price to pay, not just for promoting greater equality of access to kidneys but for ensuring ongoing public support for all programs that provide equality of access to necessary goods.

There is a second objection we need to consider. We have been focussing on inequality on one side of organ exchanges, namely, in terms of fairness to those in need of kidneys. But more frequently when issues of equality or fairness are raised in discussions of organ procurement, they pertain to the treatment of vendors. Cash payments for organs, it is argued, exploit the vulnerable. That is, since the organs tend come from among the most desperate, their purchase constitutes a kind of unfair advantage-taking. There is a good deal of empirical research devoted to backing up the claim that organ vendors are indeed desperate,[49] and a good deal of philosophical literature devoted to motivating the claim that payment to those in desperate straits may constitute the kind of unfair advantage-taking definitive of exploitation.[50]

There are two criteria that must be satisfied for a transaction to be exploitative—what we might call the consent condition and the justice condition. What matters from the point of view of the consent condition is whether both parties fully consented to the transaction in light of full information and in the absence of coercion. And from the point of view of the justice condition, what matters is whether both parties walk away with fair shares of the benefits of their

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[49] M. Goyal et al., "Economic and Health Consequences of Selling a Kidney in India," *Journal of the American Medical Association* 288, no. 13 (2002): 1589-1593; M. Shaiful Islam and Des Gasper, "Kidney Sales: How Far Do Sellers Exercise Reasoned Freedom? Cases from Bangladesh," *Exploitation: From Practice to Theory,* Monique Deveaux and Vida Panitch, eds. (London: Rowman & Littlefield, 2017): 195-220; Lawrence Cohen, "Where it Hurts: Indian Material for an Ethics of Organ Transplantation," *Daedalus* 128, no. 4 (1999): 135-65.
[50] Stephen Wilkinson, *Bodies for Sale: Ethics and Exploitation in the Human Body Trade* (London: Routledge, 2003); Rob Lawlor, "Kidney Sales: Exploitative at Any Price?" *Bioethics* 28, no. 4 (2014): 194-202; K. Greasley, "A Legal Market in Kidneys: The Problem of Exploitation," *Journal of Medical Ethics* 40, no. 1 (2014): 51-56; Paul M. Hughes, "Exploitation, Autonomy, and the Case for Organ Sales," *International Journal of Applied Philosophy* 12, no. 1 (1998): 89-95.

cooperation, relative to one another and to where each began.[51] Our proposal, that the state should acquire kidneys for those who do not have the currency to buy themselves into chains, depends on cash payments. One significant exploitation worry, pertaining specifically to the consent condition, is that cash payments can serve as a kind of undue inducement, or coercive force, such that those in desperate straits will suddenly find it very hard to decide not to sell a kidney once they are offered the chance.[52]

However, inducement already occurs in donation. Consider the pressure you would feel to offer a kidney to a loved one who will otherwise die. While in ordinary donation this pressure could be alleviated by a blood or tissue mismatch, kidney chains remove this potential excuse and so may well increase the pressure to donate. If cash payments can be said to act as a coercive force, so too can family pressures, and perhaps to an even greater degree. [53] Indeed, contract law holds that contracts can be voided in cases of undue influence by parties with special relationships, but not in cases of excessive monetary compensation.[54] One might also object that if the state were to purchase kidneys directly, as we propose, it would thereby become the inducer, and thus the exploiter, of its own citizens. But why should this be worse than its toleration of their inducement, by allowing donation or private sale? The doing/allowing distinction has no more obvious purchase where the state is involved. That the state commits

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[51] Alan Wertheimer, *Exploitation* (Princeton: Princeton University Press, 1999), pp. 13-35.

[52] Alan Wertheimer, *Rethinking the Ethics of Clinical Research: Widening the Lens* (Oxford, UK: Oxford University Press, 2011), pp. 149-156.

[53] In traditional marriages wives are more likely to donate a kidney to a husband in need than the reverse, in part because the family's livelihood so often depends on his well-being. See Hallie Liberto, "Noxious Markets Versus Noxious Gift Relationships," *Social Theory and Practice* 39, no. 2 (2013): 265-287.

[54] Brian Bix, "Contracts" in *The Ethics of Consent: Theory and Practice*, Franklin G. Miller and Alan Wertheimer eds. (Oxford: Oxford University Press, 2010): 251-280, p. 267.

rights violations is not obviously worse than that it tolerates them.[55] And surely the same can be said of exploitation.

Yet neither of these responses dispel the worry that payments for kidneys might be coercive, so how might we respond to that claim directly? According to Janet Radcliffe-Richards, a coercive offer is one that narrows the set of options available to an agent until the outcome the coercer seeks becomes the agent's most rational option. "Your money or your life" is coercive because the agent's options are narrowed to such an extent that her most rational choice is the one the coercer wants her to pick. To offer payment for the kidney of a desperate individual is not coercive, on this account, because although the offer may indeed make kidney-selling rationally preferable relative to the agent's other available options, it does this by *expanding* her set of options, not by *narrowing* them.[56] It is more coercive, according to Radcliffe-Richards, to criminalize payment because this narrows an agent's range of options down to those she finds to be worse, all things considered, than selling her kidney. What should concern us is that her other options strike her as worse than kidney-selling. But we can and should address this not by restricting choices we find repugnant, but by enhancing an agent's range of other choice-worthy options.

Cash payments might nonetheless be thought to be coercive in another sense, however. Imagine that a desperate individual is allowed to post his kidney as collateral for a loan. Debra Satz argues that in opening up this possibility to the poor, cash markets make it that much harder for them not to make use of their kidneys as a kind of external resource.[57] But while this is not

[55] Stephen Holmes and Cass Sunstein, *The Cost of Rights: Why Liberty Depends on Taxes* (New York: W.W. Norton & Company, 1999), pp. 37-49.
[56] Radcliffe-Richards, "Nephrarious Goings On: Kidney Sales and Moral Arguments," pp. 381-384.
[57] Debra Satz, *Why Some Things Should Not be For Sale: The Moral Limits of Markets* (New York: Oxford University Press, 2010), p. 200.

coercive as such, in keeping with Radcliffe-Richards' argument, we may nonetheless worry that in posting his kidney as collateral for a loan, the desperate individual effectively gives his creditor the authority to coercively violate his bodily integrity (by removing his kidney against his will) when the loan is due and cannot be repaid. On our scheme, however, we need not worry about this kind of grizzly outcome. What we are advocating is simply a cash payment to organ donors, not that persons should be able to use their kidneys as a type of currency in the free market. Our scheme provides no opportunity for two individuals to contract for terms that gives one coercive authority over the bodily integrity of the other, or to nullify the other's right to refuse an invasive medical procedure. This type of scenario is certainly a reason to avoid unfettered competitive markets, but not a reason to avoid cash payments.

Of course, injustice worries can equally constitute an exploitation objection, and this gives us good reason to care not just about equality in access to kidneys, but about fair payment to kidney vendors. Consider that black market payments to donors range from $300 to $3,000 USD, which amounts to about 1% or less of what kidney buyers actually pay. The rest of the money goes to brokerage and hospital fees.[58] This looks relatively unjust, even if the sum is in fact quite beneficial for a desperate vendor with no other equally remunerative options. On our proposal, the cost to the recipient is zero, and there is no middle man. As such, the rate received by the vendor looks decidedly less unjust, relatively speaking, because it no longer constitutes such a tiny share of the overall value. Nonetheless, it is likely that payments to donors would need to be considerably higher to increase supply. And higher payments would better address objective injustice concerns. If they also appear to reawaken inducement worries, keep in mind that the lower the payment, the more vulnerable a donor would most likely have to be in order to

[58] Scott Carney, *The Red Market* (New York: William Morrow, 2011), pp. 61-91.

accept it. Higher fixed payments could better ensure that it is not only society's most vulnerable who engage in paid exchange.

In sum, our response to the exploitation objection is that the justice component can be satisfied by an adequately high standardized payment, and that the consent component is not violated so long as the offer of payment adds to rather than diminishes an agent's set of available options. We do not mean to dismiss the reasonable concern for vendors who come from a position of desperation, but we reiterate that if kidney-selling strikes an agent as her most rational option, this is grounds not to remove the option she prefers, but to expand her option set in other ways, until something else becomes preferable. We cannot hope to make the requisite case for doing so in the limited space remaining. But this should not undercut our argument, the aim of which was to expand on the intuition that underwrites the preference for kidney chains over cash markets, not to argue for the mass redistribution of wealth that is certainly required to eradicate desperation and vulnerability to exploitation.

Conclusion:

We have argued in this paper that people's repugnance to cash markets for kidneys is best interpreted not as an anti-commodification reaction but as an egalitarian one. The problem with cash markets is that they allow the wealthy to leverage their greater economic advantages into greater access to kidneys. In a barter market of the sort represented by kidney chains, where the only thing that can buy a kidney is another kidney, background inequalities in income and wealth are effectively neutralized. But from this perspective, we tried to show, the problem with kidney chains is simply that they do not go far enough. Entry into a paired kidney exchange still depends

on having something of value to stake—a kidney—which is something that many individuals do not have. We argued that this unfairness could be remedied if the state were to purchase kidneys for a fixed cash price and distribute them to those who lack a willing donor. Although this proposal faced important objections, we found them to be defeasible. We therefore conclude that if people's aversion to unfettered markets in kidneys is indeed grounded in fairness concerns, as we have argued, payments to donors of the sort we defend would be a step forward, despite the introduction of cash.

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