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Reassessing the Likely Harms to Kidney Vendors in Regulated Organ Markets

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Julian Koplin, drawing extensively on empirical data, has argued that vendors, even in well-regulated kidney markets, are likely to be significantly harmed. I contend that his reasoning to this conclusion is dangerously mistaken. I highlight two failures. First, Koplin is insufficiently attentive to the differences between existing markets and the regulated markets proposed by advocates. On the basis of this error, he wrongly concludes that many harms will persist even in a well-regulated system. Second, Koplin misunderstands the utilitarian assessment of the market. He focuses on the costs and benefits of the transaction for the vendor. But, the relevant comparison is between an individual's welfare across different courses of action, namely, vending and the nonvending alternative. Although Koplin's empirically informed contribution is a welcome addition to this literature, the mistakes that pervade his interpretation of the data demand correction.

Keywords: *harm, kidney markets, regulation, Utilitarianism*

I. INTRODUCTION

Julian Koplin (2014) has assessed the likely harms to kidney vendors and concluded that even in a regulated market those who sell will be significantly harmed. Drawing extensively on evidence from existing markets, Koplin identifies four underappreciated sources of harm, which he maintains will persist even under careful regulation. If sound, Koplin's argument would constitute a major contribution to the debate over kidney sales. Calls for experimental trials with incentives would be otiose, were it shown that vendors would be significantly harmed regardless of regulation. In light of

his findings, Koplin claims that "the familiar argument that vendors would be harmed deserves more careful scrutiny than market proponents have given it" (Koplin, 2014, 15).

Here, I supply the requested scrutiny in the form of a reassessment of the likely harms to vendors in regulated organ markets. Reassessment is called for, not because the facts have changed, but because Koplin's interpretation of those facts is dangerously mistaken. His first error amounts to a pessimistic lack of imagination; he too eagerly greets potential problems as insurmountable. Perhaps more important, however, is his failure to properly measure the consequences of vending. In focusing only on the costs and benefits of the transaction to the vendor, Koplin's assessment is insensitive to the quality of options from which vendors choose. His case against the regulated market is thus doubly deficient. And, the deficiency is pernicious, as it encourages the foreclosure of options that may be beneficial, and may be made more so through sensible regulation.

After detailing Koplin's challenge in part two, I show, in part three, how the harms he claims will persist even in a well-regulated system may be addressed with sensible regulation. This work serves two purposes. It is offered as a refutation of Koplin's central thesis and as an advance in the dialectic, for, those who oppose trials with incentives are invited to explain how the specific suggestions proposed are inadequate. In part four, I argue that Koplin is mistaken in claiming to have established that "the utilitarian argument in favor of organ markets is rendered incomplete" (Koplin, 2014, 15). His reasoning to that conclusion is predicated on a misunderstanding of utilitarianism.

II. KOPLIN'S CASE AGAINST THE MARKET

Considerable evidence from existing markets indicates that vendors experience a range of harms. A well-known study of vendors in Chennai, India, finds that most regret their choice to vend, suffer negative health and employment consequences, and are unable to improve their economic situation (Goyal et al., 2002). Research in Pakistan suggests that sales harm vendors and damage the trusting relationship between patients and physicians (Moazam, Zaman, and Jafarey, 2009). The market in Iran has also been closely studied, and the results, consistent with other research, suggest that vendors suffer a number of serious harms (Zargooshi, 2001). The existence of such harms is not disputed, but there is persistent disagreement about their significance. Market opponents take them as confirmation of their fears and a preview of what a market would offer. Market advocates offer a different interpretation. Many of the harms described, they claim, are properly attributed to the lack of oversight in the market, unchecked unscrupulous operators, and the shady world of illegal business. On this interpretation, the documented harms make

the case for regulation, not prohibition. Market advocates have been quick to note this (Taylor, 2005; Wilkinson, 2011; Radcliffe Richards, 2012).

Koplin claims that market proponents' reasoning is flawed. Although some of the harms adduced may be mitigated or eliminated through regulation, others may not be. Market advocates have, Koplin argues, conflated two concerns. One is the harm caused by vending, and the other is the harm caused by being swindled on an unregulated market. As he summarizes his central thesis, "I argue that eliminating abusive black-market practices may not eliminate vendors' poor outcomes by demonstrating that some of the harms vendors experience may persist even under a well-regulated system" (Koplin, 2014, 8). Koplin's idea is to begin with what we know about the harms vendors suffer in existing markets, subtract from that what can be attributed to black market abuses, and to take the remainder as redounding to vending as such. Call this the *argument by subtraction*. It is by employing this reasoning that Koplin hopes to defend conclusions about the operation of a "well-regulated system" on the basis of evidence from predominantly unregulated markets.

Notice that Koplin is not making the obvious point that participants in *poorly* regulated markets are likely to be harmed. Rather, he explicitly claims to have identified harms that will persist even in a *well-regulated market*. And, this is exactly the position he should defend if he is to justify his charge that the work of James Stacy Taylor and Janet Radcliffe Richards, and "pro-market arguments regarding harm to vendors in general," conflate the harms of vending and those of the black market (Koplin, 2014, 8). To support the contention that vendors will be harmed "even under a well-regulated system", Koplin must show such harms will persist in the context of the best proposals on offer.

To support his conclusion, Koplin identifies four harms vendors are likely to suffer. "Empirical research on kidney sellers' outcomes not only documents a range of harms to physical, psychological, social, and financial well-being," he contends, "but also provides reason to worry that a regulated system would reproduce many of these harms" (Koplin, 2014, 8). He argues that market advocates have failed to appreciate:

> (1) That the risks of nephrectomy may be greater for the desperately poor than the relatively affluent; (2) that providing follow-up care does not guarantee vendors will receive it; (3) that many sellers face depression, anxiety, stigma, and social isolation as a consequence of the sale; (4) and that receiving the promised payment in full does little to protect against long-term difficulties of finding and maintaining employment (Koplin, 2014, 8).

He concludes "that vendors will usually experience a range of significant harms that ultimately leave them worse off than before the sale" (Koplin, 2014, 14). Thus, Koplin defends the

Bad on Balance Thesis: The welfare costs of vending, even in a well-regulated market, exceed the benefits conferred by compensation.

Koplin claims that the Bad on Balance Thesis delivers an important conclusion:

> [T]he utilitarian argument in favor of organ markets is rendered incomplete. Instead of pointing to the potential benefits to kidney recipients and sellers alike, proponents of organ markets will have to measure, at the very least, the benefits to recipients against the harms to vendors, as well as the increased reliance on vendors if payments displace altruistic donation. (2014, 15)

I will call the claimed entailment of the Bad on Balance Thesis the *Utilitarian Results*.

In short, Koplin makes three main moves: he deploys the argument by subtraction to parse out the harms of vending from the harms of the black market; then, to support the Bad on Balance Thesis he identifies four harms likely to persist under regulation; and finally, he argues that the Bad on Balance Thesis delivers the Utilitarian Results.

III. THE BAD ON BALANCE THESIS IS NOT ESTABLISHED

Koplin's defense of the Bad on Balance Thesis faces two problems. First, the argument by subtraction is unsound. Recall, Koplin seeks to show that vendors will be harmed in regulated markets by showing that not all harms to vendors in existing markets are attributable to black market abuses. This reasoning is reaffirmed later: "I argue that the available evidence on current kidney markets cumulatively suggests that kidney sellers typically experience negative effects across the spectrum of physical, psychological, social, and financial well-being, and that these effects may not be entirely reducible to black-market abuses" (Koplin, 2014, 9). Note the last clause. Koplin takes himself to have discovered something about kidney sales as such by subtracting from the harms inflicted on vendors in existing markets those harms attributable to the black market. This pattern of reasoning appears again in Koplin's concluding remarks: "In the face of this body of research, and in the absence of compelling reasons to believe that such outcomes are entirely attributable to black-market abuses," Koplin reasons, "the ubiquitous claim that regulated systems of kidney selling would improve vendors' well-being lacks evidential warrant" (2014, 14). We are invited to reason from the fact that not all harms vendors suffer in existing markets are attributable to the black market, to the conclusion that such harms would persist in a well-regulated system.

Were all regulated markets the same, and were improvement impossible, the argument by subtraction would have force. We could reasonably conclude that any harm not attributable to the black market redounds to vending as such. But, of course, regulated markets are not all the same. There

are many ways to regulate a market, and this variation is normatively significant.[1] What we can reasonably expect from a market will depend crucially on the context. Social and cultural factors have a dramatic influence on vendors' experiences, as does the level of technological development, the economic milieu, and the strength of relevant regulatory institutions. It is not enough to undermine the case for regulated sales to show that some market, with some regulation, harms vendors. What must be shown is that no feasible regulated market can avoid such harm. And, this conclusion is not supported by the argument by subtraction.

Koplin's defense of the Bad on Balance Thesis faces a second problem: the evidence he marshals in its support is insufficient. Many of the harms he claims will be reproduced in regulated markets are amenable to regulatory solution. In fact, many of the problems Koplin identifies have been anticipated in the literature.[2] Given his interest in the prospects of effective regulation, the fact that Koplin offers no serious discussion of these proposals strikes me as an unfortunate omission. Here, I consolidate some of the best ideas proposed, and explain how they are responsive to Koplin's concerns.

Risk

Consider the claim that impoverished vendors will face greater health risks than their more affluent counterparts.[3] To support this, Koplin quotes research from Egypt, which found that, "Parting with a kidney is significantly more difficult when donors do not have clean water or sufficient nutrition and rely on labour-intensive work to generate income" (Budiani-Saberi and Mostafa, 2011, n. 3). He also cites Nancy Scheper-Hughes' work, which suggests that "living kidney donors from shantytowns, inner cities, or prisons face extraordinary threats to their health and personal security through violence, accidents, and infectious disease" (Scheper-Hughes, 2002, 77). These facts, Koplin concludes, reveal that "The health outcomes of vendors might not equal those of donors, even if the implementation of selection criteria and follow-up care is successful" (Koplin, 2014, 10).

Notice immediately how Koplin's conclusion presupposes that whatever explains the difference in health outcomes between the rich and poor cannot itself be rendered as a selection criterion. The obvious response to Koplin's concern is to incorporate socioeconomic status into the selection process. If, as the data suggest, vendors' health outcomes are predicted in part by their economic conditions, then those conditions should be factored into screening.[4] Benjamin Hippen (2005, 2008, 2014) has argued for just this conclusion. To the extent that poverty does correlate with health outcomes, the use of socioeconomic status as a selection criterion is eminently sensible. What Koplin has offered, then, is not a reason to think that vendors would be harmed in regulated markets, but a reason to incorporate candidates' socioeconomic status into the selection criteria.

Koplin considers and rejects the suggestion that vendors could be screened by socioeconomic status, claiming it raises the "uncomfortable possibility" that the total number of organs procured will decrease (Koplin, 2014, 14). It is unfortunate that at this crucial juncture in his argument the evidence Koplin offers is so thin, for there is another uncomfortable possibility: that the prohibition he defends is the source of much needless suffering and death. He observes that most who have sold on the global kidney market have been poor and argues that even if payments were increased few would be willing to vend. As corroborating evidence, he points to a "survey of Swiss medical students [that] found that two-thirds of those who expressed willingness to sell a kidney would only do so to overcome a particularly difficult financial situation" (Koplin, 2014, 15).

It is puzzling that Koplin would cite this survey as its findings straightforwardly undermine his position. An often-overlooked fact is that the demand for kidneys is naturally "capped" by the number in need. For example, the annual demand for transplants in the United States could be met entirely with live kidneys if only about 1 in 9,000, or about .01 percent of the total population, sold each year. Now consider the findings of the survey: 27 percent of participants, almost all of which were middle to high socioeconomic status, "expressed willingness to sell a kidney" in a regulated market; almost 18 percent would consider vending only in "a particularly difficult financial situation, such as unemployment"; almost 7 percent would vend to "secure their future—for example, by investing in their education, even if they were not in a particularly difficult financial situation"; and more than 2 percent would vend "to buy luxury goods" (Rid et al., 2009, 560). Further, the two strongest predictors of willingness to vend were high socioeconomic status and male gender.[5] Rather than demonstrating that only the desperately poor would vend, these findings suggest a glut of wealthy candidates. Those interested in vending may outnumber, by a factor greater than 100, those in need of a transplant. Thus, Simon Rippon may be right to claim that as "a matter of empirical fact" few "would consider selling a kidney to obtain frivolous luxuries" (Rippon, 2014, 155). His mistake, and Koplin's too, is to conclude from this that "few" is not more than adequate.[6]

To further support the "uncomfortable possibility" that a market will result in fewer total kidneys procured, Koplin argues that the option to sell may decrease altruistic donation. He observes that "donation between family members can become seen as inappropriate when it is possible to buy an organ from a stranger" (Koplin, 2014, 15). He cites two studies of Iran's regulated market, indicating that many who had a willing related donor available nonetheless preferred purchasing a kidney from an unrelated vendor.[7] It may be true that when organs can be purchased, family members donate less frequently.[8] But, the matter of organs' origins is orthogonal to the question of supply. Notice the reduction in altruistic donations Koplin imagines *presupposes* that the market has worked. For, the decreased pressure family

members feel to donate is only made possible by the market's furnishing of an alternative source. It requires, as Koplin says, that it is "possible to buy an organ from a stranger." It is no surprise that the studies Koplin cites are both from Iran, where the regulated market has largely eliminated the waiting list. If Koplin's evidence shows anything, it is that altruistic donations may be supplanted by kidney sales. But, displacement offers no evidence of a reduction.

Koplin's claim that vendors in regulated markets will be subject to increased health risk is left unsupported. The obvious solution—already present in the literature—is to incorporate socioeconomic status into the selection criteria for potential vendors.

Care

Koplin argues that vendors will be harmed on account of their unwillingness to receive proper postoperative care. Currently, in most cases those who sell are engaged in illegal activity and are accordingly reluctant to present themselves as vendors. But, even in contexts where sales are legal, vendors have been unwilling to seek care. Koplin notes that this was a problem, for example, in India's market before sales were prohibited as well as in Iran's regulated market. He suggests vendors do not receive the care they need in part because vending is stigmatized in some cultures, and in part due to a general distrust of medical institutions. Accordingly, many who need the care, even if it is offered to them, will not receive it. "How regulated systems of organ selling would avoid these problems," he concludes, "is far from obvious" (Koplin, 2014, 11).

Of course, there is no expectation that our problems admit of an "obvious" solution, nor is that a reasonable standard. However, in this case a rather obvious solution does suggest itself. If one is concerned that vendors will miss critical follow-up care, one ought to offer compensation in installments, or make it otherwise contingent on vendors' return. The offer of money got them to the hospital for their sale. It ought to get them back for their care as well. As before, it should be noted that my response here is not original. This solution has already been suggested (Taylor and Simmerling, 2008). But, other measures to ensure adequate care can and should be pursued as well. We might seek to influence peoples' attitudes toward vending to lessen its stigma, and increase efforts to inform vendors of the importance of follow-up care.[9] These strike me as reasonable responses to Koplin's concerns. Moreover, as he concedes, the salience of these worries is apt to vary dramatically across cultures. And no evidence thus far offered suggests this would be a problem in most of the developed world. There will be different problems in different places that will require different solutions. Thus, the suggestion that vendors will not receive follow-up care is unsupported.

The flaw in Koplin's argumentative strategy is evident. His approach to defend the Bad on Balance Thesis is to identify some problem that may arise if sales are permitted, to try and fail to devise a solution to that problem, and then to conclude on the basis of this failure that no solution is available. The trouble with this approach is that one may mistake one's own failure of imagination for a special insight. And, this appears to be just what has happened. The first two harms Koplin identifies appear amenable to regulation. Moreover, the regulatory solutions responsive to Koplin's concerns have long been published. Had he engaged with these suggestions, his position on the efficacy of regulation might have been more nuanced, and perhaps moved the debate forward.

Psychological and Social Harm

Koplin argues, with appeal to empirical and ethnographic evidence, that vendors will suffer extensive psychological and social harms. He cites, for example, a recent analysis of qualitative research finding that those who sell a kidney characteristically feel desperation, despair, and debasement (Tong et al., 2012). He also cites a number of ethnographic studies corroborating these claims. The evidence suggests that many vendors feel anxiety and hopelessness after their operation, as well as other negative emotions. Citing work from Pakistan by Moazam and colleagues (2009), Koplin notes that vendors experience "regret and remorse, often grounded in perceptions of the intrinsic 'wrongness' of selling organs; constant fears related to living with only one kidney; and a sense of feeling incomplete—like 'half a man'—after the surgery" (Koplin, 2014, 11). He also cites work by Moniruzzaman (2010), indicating that vendors in Bangladesh typically "felt deep sadness, feared imminent death, and worried about how Allah would judge them for selling 'his gifts'" (Koplin, 2014, 11). Beyond these psychological harms, vending exacts a social toll as well. As Scheper-Hughes (2008) has documented, some vendors in Brazil, Moldova, and the Philippines have been excluded from their religious communities as a consequence of their sale. That social stigma attaches to vendors is further supported by research conducted in Egypt and India. This work suggests that the psychological and social harms of vending extend to others in the community as well (Cohen, 1999; Budiani-Saberi and Mostafa, 2011).

I argue first that Koplin has failed to show that such harms will arise in a regulated market. And second, even if such harms persist under regulation, I maintain they cannot do the argumentative work Koplin assigns them.

I begin with an objection Koplin anticipates: "It could be argued that establishing a legal market might itself mitigate these psychological effects by bringing markets into the open, thereby fostering acceptance of kidney selling" (Koplin, 2014, 12). This suggestion is more powerful than Koplin realizes. Unlike the physical harm of a nephrectomy, the psychological and

social harms at issue may vary significantly across cultures. Such harms are mutable.[10] Whether one faces these harms, and their severity, is chiefly a matter of the prevailing attitudes in one's society. The legal status of vending, as Koplin notes, is one factor that may shape those attitudes. However, social and cultural norms will also matter, and those differ widely. Moreover, attitudes can be changed. The framing of an issue can have a dramatic influence on how it is perceived.[11] Perhaps a legal market, combined with efforts to influence public opinion, may result in different views about kidney sales, and so predict very different outcomes for vendors' psychological and social well-being. Clearly, determining how so many diverse societies may respond to kidney sales, and then determining if prevailing attitudes can be influenced, is a complex empirical task.

In light of this complexity, Koplin's rejoinder is particularly dissatisfying. To meet the objection, Koplin invokes as "especially noteworthy" Zargooshi's 2001 study of Iran's market, in which sales were legal (Koplin, 2014, 12). He then goes on to show that vendors there suffered psychological and social harm. We are invited to conclude from the Iranian experience that, after all, psychological and social harms are features of vending in any market. It is hard to see how these remarks are remotely responsive to the objection. Zargooshi's study, as others have noted, has a number of serious limitations.[12] The data are both very old—about 20 years—and drawn entirely from the economically depressed region of Kermanshah (Fry-Revere, 2014). Again, how this is supposed to show that psychological and social harms will be reproduced even in well-regulated markets is mysterious. Although there is much to learn from Iran's experience, it offers little insight into the experiences of vendors elsewhere.[13] No one who was not already convinced of his conclusion would find Koplin's extrapolation from Zargooshi's data compelling.

Now, there is a second stronger reason to deny that Koplin's concern about psychological harm recommends a ban on sales. Recall Koplin's discussion of vendors' attitudes. He observes that some choose to sell despite thinking it "intrinsically wrong" and others do so thinking their act amounts to selling "Allah's gifts." Because rational people do not do things they take to be intrinsically wrong or sell what they take to be Allah's gifts, unless they have a very good reason to do so, we should assume the alternatives were quite bad. One can only imagine how horrific the options must have been for vending, so understood, to be judged the best of one's options.

The worry, then, is that the prohibition is likely to exact greater harms, psychological and otherwise, than those attributable to the market. One cannot, without attributing implausible and insulting motives to vendors, suppose the psychological toll of the prohibition is insignificant. And, the more unappealing one finds the prospect of kidney sales, the more one should be concerned about consigning the poor to what they perceive as even worse.[14]

We cannot defend the prohibition as a means of avoiding psychological and social harm if the prohibition inflicts such harm in greater measure.

This objection is anticipated by Koplin: "It could be argued that even if vending a kidney is psychologically distressing, prohibiting the desperately poor from selling a kidney itself inflicts psychological harms by preventing people from improving their financial circumstances or that of their family" (Koplin, 2014, 12). But, he is unmoved by it. He would prefer to assign the psychological harm of the prohibition to poverty. "It is not clear why these harms should be attributed to the prohibition of organ markets specifically," he explains, "rather than to factors that contribute more directly to vendors' poverty, such as the failure of existing social policy measures to improve the situation of the desperately needy" (Koplin, 2014, 12). Here, Koplin responds to a claim about the existence of harms with a claim about the origin or cause of those harms. He does not dispute that some may be pained when prevented from vending, but instead re-describes that pain as a consequence of poverty. This response misses the point entirely, as the objection depends in no way for its cogency on the etiology of the harms identified.

It is, of course, implausible to hold that the harm of the prohibition is properly understood as the harm of poverty. One way to see why this reasoning is deficient is to look at some of the absurd conclusions it would license in other contexts. For example, many people depend for their livelihood on working long hours picking fruit. Because such work is unpleasant and poorly compensated, only those in poverty are likely to find it appealing. A policy banning such labor would put many out of work. On any natural interpretation of the scenario, those who lose their jobs on account of the policy have been harmed by it. Before, they were employed and poor, but now they are unemployed and poorer. On Koplin's account, however, these former fruit pickers cannot protest the policy that leaves them unemployed, but only the poverty that made such employment appealing in the first place. This reasoning is sadly misguided, as few things more directly contribute to poverty than involuntary unemployment.

There is, however, a more serious problem with Koplin's response. He is mistaken to take the harm's source as relevant. Let us suppose he is right, and grant that the harms in question are properly attributable to poverty and not the prohibition. This concession gets Koplin nowhere, for it detracts in no way from the claim that our interest in avoiding harm gives us a reason to allow sales. It remains true that some harm may be avoided by permitting sales, and this is a fact no amount of re-description can change.

Economic Harm

I now take up Koplin's final consideration, namely, that vendors are likely to suffer economically as a result of their sale. He supports this contention by appeal to a number of studies (Zargooshi, 2001; Goyal et al., 2002; Mendoza,

2010, 2011; Budiani-Saberi and Mostafa, 2011). The picture that emerges is a sad one. Research regularly finds that those who choose to vend as a means to escape poverty rarely succeed. Koplin notes that many of those who suffered financially from vending received the full amount of compensation promised. Accordingly, we cannot attribute these economic harms to unreliable payment in the black market. He then argues from the fact that "studies have established that the overwhelming majority of kidney vendors chose to sell an organ in the hopes of escaping debt, yet only a small minority achieved this goal" (Koplin, 2014, 12), to the conclusion that vendors do not benefit financially.

This objection fails for now familiar reasons. Here, too, Koplin treats regulated markets as if they were all the same. Having shown that some vendors, when paid in full, did not benefit economically, Koplin concludes that vendors in well-regulated markets, when paid in full, will also not benefit economically. But, it must matter whether the "full payment" one receives is $100,000 or $1,410.[15] And, it must matter if one is a day laborer undergoing open nephrectomy in Iran, or a carefully selected candidate for a laparoscopic procedure in the United States.[16] Further, if Koplin deems the promised payment inadequate, the next step is to require a higher payment, not prohibit sales.[17]

Taking Stock

Having surveyed Koplin's evidence and argument for the conclusion that vendors will be significantly harmed even in well-regulated markets, we are positioned to take stock. The weakness of the argument by subtraction is obvious. To suppose that one arrives at the design of a well-regulated market by subtracting the harms of the black market evinces a poverty of imagination. This problem is compounded by Koplin's failure to engage with the most promising suggestions for regulation already present in the literature. Further, when Koplin does consider possible regulations, the evidence he offers is inadequate. As a result, the only conclusion supported by his work is the uninteresting one that vendors in poorly regulated markets may be significantly harmed.

On reflection, these results are unsurprising. What more could be expected from an attempt to substantiate a sweeping generalization about the operation of kidney markets as such, on the basis of limited evidence principally gathered from unregulated markets in the developing world? One need not attribute any special significance to the distinction between regulated and black markets to deliver this conclusion. Rather, mere appreciation of the paucity of evidence is sufficient to render dim the prospects of establishing Koplin's ambitious thesis.

In the introduction, I claimed the arguments here serve two purposes. There is a first-order dispute about vendors' well-being. I have argued that

Koplin fails to establish his central thesis. A further purpose of this discussion, relevant to the larger debate over kidney sales, is to advance the dialectic. For, there is a second-order dispute over where the burden of proof lies. Many oppose even experimental trials with incentives and offer as justification a line of reasoning that replicates, in no small measure, the deficient structure of Koplin's argument by subtraction. A representative expression has it that "'Pilot studies' aren't needed" because "natural experiments" have settled the matter (Capron, Danovitch, and Delmonico, 2014, 23). The foregoing shows this rationale to be unconvincing. Given the salient differences between those markets about which we have evidence, and the structure of a well-regulated market, such facile comparisons are misguided. Of course, many will remain unconvinced of the need for trials. If their opposition is strictly ideological, they are invited to acknowledge that. But, if they are sincerely interested in the possibility of a well-functioning regulated market, their resistance must move beyond rehearsing grim statistics. Their opposition must instead be responsive to the best proposals for market regulation on offer.

It may be objected that I have not conclusively proven the regulatory suggestions to be effective solutions. Yet, to insist that trials are unjustified on the grounds that we lack decisive confirmation of their sure success is, at best, to misunderstand the purpose of experimental trials, and at worst, a disingenuous rhetorical conceit. This brings out an important asymmetry between the burden of proof placed on those advocating experimental trials and those who oppose them. To defend the latter position, one must offer evidence that we ought not seek more evidence. Those who protest that such trials "would not be free of risk" must be disabused of the notion that any course of action, including the prohibition on sales, is free of risk (Rothman and Rothman, 2006, 1526). And, the strained speculation currently on offer that trials in the United States will ineluctably foment unregulated sales around the world replaces measured risk assessment with gratuitous slippery-slope thinking (Capron, 2014). Metaphors invoking Trojan horses and crossing the Rubicon are colorful; they are not cogent.[18] And, flippant comparisons of kidney sales and slavery are breathtaking in their thoughtlessness, and display a failure to appreciate the gravity of both slavery and those suffering due to the kidney shortage (Delmonico et al., 2015, 1954). The epistemically modest position favoring trials requires only recognition that incentive may be effective, that the potential gains are significant, and that the doom and gloom peddled by the staunchest opponents is unwarranted.

IV. THE BAD ON BALANCE THESIS WOULD NOT SECURE THE UTILITARIAN RESULTS

Let us suppose the arguments of part three fail, and that Koplin has established the Bad on Balance Thesis. Would this deliver the Utilitarian Results?

I claim not. Koplin's reasoning to this conclusion is predicated on a misunderstanding of utilitarianism.

Notice, the Bad on Balance Thesis makes a claim about the costs and benefits of an act. It construes the significance of a kidney sale as a function of the difference between vendors' welfare before and after the sale. What is measured is the net contribution *of the transaction* to the vendor's welfare. The assessment is in this way "local." Because Koplin focuses only on the transaction, his account is insensitive to the quality of the options within the set from which potential vendors choose. Yet, if we are concerned about potential vendors' welfare, our assessment of the prohibition must compare the expectable outcome of vending with the alternative. To make this vivid, consider:

Cancer. Your wife needs treatment that can only be financed if you sell a kidney. The only buyer, aware of your plight, is willing to pay enough for the treatment but not enough for full compensation.

The options here are the on-balance harm of the kidney sale (keep your wife), and the sure death of your wife (keep your kidney). Morally decent people face an easy choice. Whatever considerations tell against you vending, none is supplied by an interest in your overall welfare. For, even if vending is bad on balance, saving your wife more than compensates. And, it requires sadly little imagination to generate cases in which one's best option is on-balance harmful. Thus, even when limiting our scope to potential vendors' welfare interests, and stipulating that sales are on-balance harmful, it remains an open question whether sales should be permitted on utilitarian grounds.

The Utilitarian Results are not delivered by the Bad on Balance Thesis. They require defense of the

Non-Optimific Thesis: Kidney sales exact greater costs on vendors than those costs that would result from taking what they judge to be their next best option.

The Non-Optimific Thesis requires a comparison, not between a transaction's costs and benefits, but between a person's welfare across possible courses of action. Here, the benefit to the vendor is a function of the difference between the expected welfare after vending and the expected welfare after taking a nonvending option. This calculation is "global."

To defend the Non-Optimific Thesis, one must show that vending is bad for potential vendors, *given the options they face*. Further, because utilitarianism is aggregative, even if we focus only on vendors' welfare, to deliver the Utilitarian Results one must show that potential vendors' choices will be bad *enough*. A *sufficient* number of potential vendors must be expected to make non-optimific choices that are *sufficiently* worse than their second-best choices, such that the group's aggregate welfare is best served by forcing all to their second-best options. Koplin does not even attempt to defend this claim.

One may object. Does Koplin not provide evidence for the Non-Optimific Thesis, even if it is not specifically offered in its support? As Koplin observes, "Almost every study that has asked the question has found that the majority of vendors regret selling a kidney and/or would not recommend doing so to others" (Koplin, 2014, 14). If vendors reliably regret their choice, does this not supply reason to think their judgment on this matter is reliably poor? Is it not significant that few would recommend vending to others? If we are to take vendors' judgment seriously, we should perhaps take their regret as an indication that vending was not the best option. It seems, then, that to reason from the evidence already supplied to the Non-Optimific Thesis requires little additional argument; we already have reason to think vendors' choices are non-optimific, reason supplied by vendor regret.[19]

This is not evidence for the Non-Optimific Thesis. For, that requires a comparative judgment, and the foregoing supplies only evidence about one option, vending. To see why this is inadequate, consider:

Boxes: You are presented with two boxes of unknown contents, A and B, and are forced to select one.

Suppose you select box B, which is found to contain a damp Kleenex. You may study this Kleenex as carefully as you like, but nothing you learn will supply the information necessary to make a judgment of its merits as compared to the still unknown contents of box A. That box may contain $5 or a blanket infected with smallpox. Who knows?

In order to support the Non-Optimific Thesis, and so deliver the Utilitarian Results, we must know the contents of the nonvending alternatives. What happens to those who would vend if that option is closed? Unfortunately, nothing in the literature cited by Koplin supplies this information. At best, we learn what motivated vendors. Tong and colleagues, synthesizing available evidence, find that "Selling a kidney was perceived as the only means for survival, to repay debts they owed, or to assist a family member in financial need" (Tong et al., 2012, 1142). Although this gives some indication of the desperation that made vending appealing, it offers no information about what measures would be taken, were vending foreclosed. Perhaps desperation makes prostitution more appealing. Perhaps it leads one to see one's children as economic resources, or to think criminal activity choiceworthy. Perhaps one is drawn to take up dangerous labor. And, perhaps those who take these options do not escape from debt, later regret their choices, and would not recommend them to others. That is to say, all of the consideration thought to suggest that vending is non-optimific may arise with equal or greater force when the nonvending option is taken.

Of course, some options may be inherently more likely to deliver non-optimific results than others. Between chess and Russian roulette, we should play chess. This choice is easy because we know what both options involve. But, we still do not know the content of the nonvending alternative.

It might be suggested that desperation supplies reason to think vendors' choices are non-optimific. As Erik Malmqvist observes: "It seems easier to overestimate the value of a sum of money desperately needed and easier to disregard long-term risks when one's everyday existence is focused on meeting immediate needs" (Malmqvist, 2014, 116). This argument is unpersuasive. The desperation claimed to impair potential vendors' judgment is not eliminated with the option to vend. It persists and will influence vendors' judgment of their next option as well.

There is one important respect in which the case of vending is unlike *Boxes*. For, in *Boxes*, the contents of both options are unknown. By contrast, those who choose vending over the alternatives have some information about their choices. So, there *is* something we know about the nonvending option, namely, that it will be regarded by those forced to take it as less desirable than vending. This difference, I suggest, makes defense of the Non-Optimific Thesis even harder to sustain. One must be prepared to tell those potential vendors, who have partial knowledge of both boxes' contents, that their judgment is mistaken, and that they should be made to comply with that of another, one who neither has knowledge of both boxes' contents, nor has to live with their choice. I do not see how such an intervention could be justified.

And, notice, the fact of partial knowledge does nothing to improve the evidentiary status of vendor regret. Consider

Peeking: You are presented with two boxes, A and B, and are forced to select one. Peering in through small holes, you see some of their contents.

Suppose in box B you spy a blanket in a beautiful shade of blue—your favorite color. There is another blanket in box A, but that one is a sad gray. Naturally, you prefer box B. Upon opening, you may discover a damp Kleenex or $5 or a new car. No matter, regardless of what you learn, nothing could supply the evidence needed to make a comparative judgment of the boxes' contents. Perhaps box A has identical contents, apart for its less desirable blanket—or a rattlesnake. Who knows?

Vendor regret, I conclude, does not support the Non-Optimific Thesis.

V. CONCLUSION

Koplin's assessment of the likely harms to vendors in regulated organ markets is doubly deficient. First, his central claim, that vendors are likely to be harmed even in regulated markets, is unsupported. The argument by subtraction fails to take into account the many meaningful ways a market may be regulated. And, as a result, the four sources of harm Koplin takes to be intractable are, on inspection, amenable to regulatory solution. Second,

Koplin takes the evidence to deliver the Utilitarian Results. This claim is never supported, and appears to rest on a misunderstanding of utilitarianism. It is a sad fact about the world that some people's lives may be improved by acts that are not on balance beneficial. Before substituting our own judgment for that of those who bear the consequences of our choices, we ought to think more carefully about the limited options of the desperately poor.

NOTES

1. For recent work in the area of market design, see Vulkan, Roth, and Neeman (2013). For a nice discussion of the normative significance of various forms of market regulation, see G. Cohen (2013, 2014b).

2. For extended discussion of market regulation, see Erin and Harris (1994), Satel (2008), Omar, Tufveson, and Welin (2010), Hippen (2005), Taylor (2005), Radcliffe Richards et al. (1998), Matas (2004), Working Group on Incentives for Living Donation (2012), and Cronin and Elias (2008).

3. This claim, it should be noted, has implications for the selection of kidney *donors* as well.

4. There is a correlation between socioeconomic status and susceptibility to kidney disease (Hossain et al., 2009).

5. These counter-intuitive findings about economic status and willingness to vend are less surprising when viewed in the context of related research. In his response to Koplin's paper, Benjamin Hippen cites two studies finding that "those with the highest annual earnings were also the most willing to accept an incentive for themselves" (Hippen, 2014, 32). See Halpern et al. (2010) and Barnieh et al. (2012).

6. Koplin is not the only market opponent to misinterpret the work of Rid et al. Arthur Caplan, also concerned about prospects of a market increasing supply, finds it "hard to imagine many people in wealthy countries eager to sell their organs" and cites the same study as if it corroborated his failure of imagination (Caplan, 2014, 412). So too, expressing a similar concern, does Alexander Capron (2014, 201, n. 68).

7. The studies are: Ghods and Savaj (2006) and Kazemeyni and Aghighi (2012).

8. One might reasonably wonder if currently some are not unduly influenced by family members' pressure to donate. If so, the resulting reduction in supply may be a welcome one. For more discussion of these family dynamics, see Scheper-Hughes (2007).

9. One may recall the extensive and prolonged efforts organ procurement organizations exerted in crafting the "gift of life" narrative that rendered organ donation culturally acceptable. For an insightful discussion, see Healy (2010).

10. Recent empirical work lends support. That attitudes can be changed is suggested by Lavee et al. (2013), which found that a concerted effort to overcome cultural opposition to organ donation, exerted by the Israeli government and medical leaders, resulted in significant increases in rates of donation.

11. For discussion of the phenomenon at the level of individual choice see Tversky and Kahneman (1981). For discussion of the phenomenon as applied to social movements, see Benford and Snow (2000).

12. The limitations of Zargooshi's study are widely discussed. See, for example, Aramesh (2014), Fry-Revere (2014), and G. Cohen (2014a).

13. For an informative discussion of what can be learned from Iran, see Hippen (2008).

14. This familiar point about the significance of vendors' judgment has been made aptly by Radcliffe Richards on numerous occasions: see Radcliffe Richards (1996 and 1998) and Radcliffe Richards et al. (2012).

15. Vendors in Chennai were promised an average of $1410, though they received only $1070 (Goyal et al., 2002). By contrast, estimates suggest payments of greater than $100,000 may be cost effective in the United States (Matas and Schnitzler, 2004).

16. Recovery times for laparoscopic nephrectomy are appreciably shorter than those of the open procedure (Nanidis et al., 2008).

17. It is worth noting that Koplin's concerns about the likelihood of securing meaningful economic benefits in vending, especially for laborers in developing parts of the world, have been anticipated in the literature, for example, Taylor and Simmerling (2008).

18. See, respectively, Danovitch and Leichtman (2006) and Capron, Danovitch, and Delmonico (2014).

19. I thank an anonymous referee for encouraging me to develop my response to this objection.

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