COMMENT

Teaching ethics and trading organs

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The buying and selling of human organs bothers many people these days, and for good reasons. As an academic teacher in the US who tries to help students test their moral intuitions in bioethics, I resist reflexive claims that the creation of a market for organs is simply wrong. To serve my students best, I feel obligated to push back–to figure out more precisely what bothers them so much. As a thought experiment, I like to borrow an apt question often posed by a colleague of mine: What's wrong with me (a physician, lawyer, and ethicist all rolled up into one with no outstanding debt or desperate need for money) accepting 5 million US dollars for one of my kidneys? If one accepts that society is made up of individuals with a plurality of acceptable values, and one takes seriously the notion that we ought to respect informed choices when it doesn't obviously harm others, it becomes trickier to find moral fault in this voluntary transaction. For one thing, it seems implausible to suggest that I am being unfairly treated in agreeing to such an arrangement. Moreover, being of sound mind, am I not allowed to do with my body as I please? Indeed, to further my case, I admit to having an overwhelming desire to retire early, buy a yacht and sail around the world, and the thought of eventually doing that in 20 years given my current comfortable salary depresses me. The sale of my kidney now will free me up immediately to do as I really please. Finally, to satisfy those close to me who worry about my welfare, I am making provisions with an insurance company with a small fraction of my substantial profit to cover all costs of follow-up care, including the unlikely possible need for dialysis and/or transplant should my one remaining healthy kidney fail in the future.

At least in the autonomy-loving US, when students are posed with this specific hypothetical, they struggle to find defensible reasons to prevent the sale of this dispensable body part. I take this struggling to be a sign of pedagogical success. However unrealistic or improbable the scenario seems, pressing this kind of "philosophical exercise" has educational value, and I would argue that students of medical ethics in India stand to benefit from engaging in such provocative reflection as much as students in my classroom. In this short commentary, I have a single point worth stressing: for all teachers of medical ethics, our job is to help students better identify what should count as core moral worries and what should count as mere window dressing in the ethical evaluation of health care practices, well-established professional behaviours, and social norms in our world.

In no way should this be read as apologetic to the organ trade currently in existence in various parts of the world. India, in particular, has a grave problem with the illegal trafficking of kidneys. The problem is complex, and at least from my vantage, it raises unsettling questions about long-standing repressive social attitudes, and perhaps even professional medical conditioning, which insidiously appear to encourage a pattern of moral indifference to the country's most vulnerable populations (1). Though tempting, no one person should be made a scapegoat as the chief source of organ mischief in India. As much as individual bad actors contribute to the perpetuation of the outlawed trade, it would be an incomplete indictment if the disregard for and often gross neglect by society's well-heeled for their worse off countrymen and women were not included in a full critique. The illicit market for organs can only function when many distinct human inputs are willingly (whether actively or passively) present, with simultaneous and often glaring inattention from sectors traditionally charged with protecting public welfare. Laws are only as effective as the people who administer them, and in an arena like medicine, successful enforcement also critically depends on responsible citizenship by professionals in health care.

Close examination of more transparent commercialised organ trades as organised in countries like Iran, and until recently Pakistan and the Philippines, also raises ethical worry (2). Those who have openly traded their kidneys for money in these countries can rarely, if ever, be characterised as well-positioned to make an informed and truly voluntary choice. The libertarian assertion that these persons never have to agree to the proffered contractual terms wrongly seeks to prioritizes questionable expressions of "free will", and overemphasize the moral import of "choice". It further risks discounting a tragic complex of psychological motivations stemming from oppressive background conditions that often culminate to severely restrict freedom. The available evidence reveals a clear lack of level playing field for actors in these commercial transactions (2). Indeed, with a wink and a nod, it seems participants in the open trade know that if the organ seller could financially afford not to give up her kidney, she would never agree to the transaction. The grim empirical truth is: the rich and well off are never the suppliers of sold kidneys, and almost always the recipients. As such, we are forced to own up to a core ethical problem with the actual creation of a regulated market for organs–in the real world, it seems predestined to promote exploitation.

Several potentially important questions follow: First, what defines exploitation? Second, what's wrong with exploitation? Third, even if we agree exploitation is wrong, can someone choose to be exploited when she deems it in her interests?

Fourth, in cases where we are uncertain of the degree of exploitation, isn't the temptation to act paternalistically to restrict human liberty more worrisome? Each of these questions requires our thoughtful engagement. Additionally, focusing in on what makes the current exchange of organs for money exploitative is an exemplary means to begin an analysis of a much larger set of issues: the social determinants of health, personal responsibility for health, and the limited resources to secure health available at any time. It challenges teachers, students, and medical professionals to own up to society's shortcomings in promoting the welfare of the disenfranchised. It challenges us to examine a pervasive callousness towards those who by no fault of their own end up being born into destitution and squalour, who despite constant effort are many times unable to rise above their meagre circumstances and who, ultimately, find no avenue for relief but to sell their body parts to those of us who often are just born luckier.

Furthermore, it should challenge those who would prefer to draw our emotional attention to the plight of those suffering in need of a kidney instead to a careful consideration of what would constitute the most responsible, rather than expedient and profitable, solution. It should force us to recognise that just because someone is willing to sell his kidney doesn't mean we ought to take it–much in the same way we don't reflexively honour a request for amputation, just because someone prefers to be one-armed. The presence of a quick medical fix doesn't mean it is the ethically preferable fix.

If we are right to seriously worry about exploitation, surely we should dedicate our efforts to looking at alternative schemes to increase the pool of available organs before promoting the trade as it now operates (as example, consider a sizeable tax-benefit to the rich who "donate" kidneys). Finally, it is worth noting that those who advocate on behalf of the dying with transplantable organ failure in places like India (and who, by the way, profit handsomely from their surgical work) conveniently seem to forget that such innocent victims are hardly the majority of innocent victims who die daily from preventable disease with more easily treatable conditions (read: HIV/AIDS, TB). In the end, focusing on exploitation can lead all of us who have a stake in these issues to more seriously consider what it means to allocate scarce health resources (whether money, devices, drugs, or organs) sensibly and justly, and hopefully, will force more transparent conversations about prioritisation and greater acknowledgment of the need to ration medicine equitably rather than on mere ability to pay or "willingness" to supply.

I believe that in order to get at any of these issues in a meaningful and constructive manner, we need to allow for provocative ethics discussions in relevant forums, not the least of which is in the pre-clinical classrooms of medical students globally. Strikingly, at the National Bioethics Conference in Bangalore in 2007, several prominent local ethics educators argued that we have no right to do with our organs as we please because they are (as we are) gifts from a divine source. Simply put, the sale of our body parts would violate a religious proscription. This position, of course, requires one to possess certain beliefs and commitments that are by definition not universally held, and therefore, begs a question about these educators' willingness to tolerate a plurality of human values. The more immediately worrisome feature of this kind of argument to me, however, is that, as potential pedagogy (these were medical school teachers), such talk stifles productive debate through demanding some kind of monolithic acceptance. Arguably, the better path to a more complete understanding of our uniquely human predicaments proceeds through a rigorous dialectic that doesn't presuppose right or wrong answers, and instead, openly evaluates the plausibility of possible justifications (whether rooted in deontological, consequentialist, secular, or religious traditions).

Admittedly, this is not easy work for highly-trained philosophers, let alone basic medical ethics educators, particularly in academic environments where science is stressed over humanities. It requires a temperament of mind that is not instinctive to most medical professionals, and moreover, promoting this kind of analytic reasoning skill may seem unnecessarily indulgent in places overwhelmed by dramatic social inequities. However, I believe that while teaching medical ethics requires attention to context, it need not be exclusively preoccupied to local conditions. If human exploitation counts as a core moral worry, it should be universally felt. Many of us in the US are deeply troubled when legislators within our states suggest that prisoners (most often black males) should be offered reduced sentences in exchange for their kidneys to help with the supply side of the equation (3). Many of us are also worried about the seemingly growing comfort many infertile women have here with purchasing a surrogacy contract at a much reduced price from "willing" fertile women in India (4). But, then how do we respond to published statements from some of these surrogates claiming that they are happy to take on these burdens and insist that they are not being exploited – which stands in notable distinction to the claims of their kidney vendor counterparts? Interestingly, some in India (who ostensibly oppose kidney trade) seem to be encouraging surrogacy as a legitimate part of the outsourcing growth industry, perhaps as another means to increase individual and the country's wealth. We need to ask ourselves: if the ultimate risks to the vendors of temporary womb rental and kidneys are plausibly comparable, can these contradictory positions be reconciled?

To conclude, quick conclusions about the inherent wrongness of body part commodification need closer scrutiny. If we can remove exploitation from the realm of pragmatic worry, ethical objection to organ trading becomes harder to ground. As thoughtful medical ethics educators, getting our students to recognise a serious concern about social inequity is not all that we should feel obligated to do. If the slow growing but laudable commitment to bioethics education in India effectively translates into students being prevented an opportunity to examine all aspects of a moral problem in medicine either because their teachers insist only on preoccupation with the local injustices that undeniably colour the contextual application of moral principles, or because they demand that

certain faith-based moral tenets never be violated, it is an approach that will do disservice to its intended audience. It certainly risks replacing a new opportunity for critical reflection with question-begging commandments. Pushing students, even in their late adolescence, to begin to think outside the box, to develop the capacity for philosophical inquiry, may be out of step with much mainstream science and mathematical educational practice in India (5). In my opinion, however, all persons who are worthy of the moniker "teacher" should aspire to at least one common thing: opening their students' minds rather than closing them.

References

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