

Organs for sale

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(Through the courtesy of Dr. Radcliffe Richards we reproduce an abbreviated version of her essay which provides a counterpoint to the stand enunciated in earlier issues of this journal. An expanded version of this essay will appear in The Journal of Medicine and Philosophy later this year. Dr. Richards asks us to point out that this summary of her arguments has been prepared by our editorial board. She might have placed different emphasis and used a different style.)

Introduction

When evidence of trade in organs for transplantation from live vendors reached attention in the West, widely different groups indignantly denounced it. Restricting my remarks to kidneys, I suggest that this indignation is misplaced.

Those criticising the rich for greed appear to lose sight of the fact that those seeking kidneys are dying individuals trying to save their lives. Each of us will do everything we can to save our lives. If anything, spending money to save one's life involves less greed than does spending money on luxuries.

The critics' attitude towards the poor selling organs is even odder. The young Turkish father swept on to everyone's television screen wanted to sell his kidney to pay for urgent hospital treatment for his daughter. By banning this sale, we deprive him of his best option and leave him with one he considers even worse than the loss of a kidney. Our indignation on behalf of the exploited poor seems to take the curious form of making them even worse off, leaving behind a trail of people dying who might have been saved and another of people desperate enough to offer their organs who are thrust back into the wretchedness they were hoping to alleviate. To respond that no one should be in these desperate situations is idle and wishful thinking.

Let us consider the arguments against the sale of organs one by one.

Autonomy and consent

Many claim that there can be no genuine and free consent to the sale of organs. It is argued that would-be organ vendors are poor, undereducated and underprivileged and do not comprehend the risks. If this argument be expected, such individuals should not be accepted to comprehend the risk of donating an organ either. In either case, the solution lies not in banning the proce-

dures but in counselling and dispelling ignorance. Where there is genuine incompetence to consent, someone competent must make a decision on their behalf as is the prerequisite for any procedure with potentially serious consequences such as abortion, AIDS testing or surgery.

Others argue that would-be vendors are coerced by poverty and since coerced consent is not real, the choice should not be allowed. Coercion is something that reduces the range of options open to an individual, so there is a sense in which poverty can be said to coerce people into selling their organs. The only way to remove this coercion, however, is to widen their range of options, preferably by removing their poverty. Banning the sale of the kidney only reduces the options still further. To the coercion of poverty is added the coercion of the supposed protector who comes and takes away the best that poverty has left. This cannot be justified by concern for freedom and autonomy.

Even if this argument did work, it would still make no distinction between sale and donation of an organ. In the latter instance the coercion is the threat of impending death of a relative, quite a potent form of coercion, you will agree. The logic is the same.

It is also claimed that vendors are coerced when they are made unrefusable offers of several times their annual income. Such an offer, however, does not narrow the options open to the individual. It broadens the range. The original options are still there. If you ban such offers, you are constricting options, not removing a coercion.

Harm to the vendor

It is also said that State paternalism grounded in social beneficence dictates that the abject poor should be protected from selling parts of their bodies. Advocates of this idea do not explain why the poor are misguided in their judgement that organ selling is in their best interests. The assessment of the potential harm of losing a kidney as weighed against the potential benefit of whatever payment is received is, at best, not easy. The risks of hang gliding, rock climbing or diving from North Sea oil rigs are much greater than those of nephrectomy. It is plausible to say that the expected benefits will be much greater to the desperately poor who see in selling a kidney the only hope of making anything of their wretched lives and perhaps even of surviving, than to the relatively rich. If the rich who take risks for pleasure or thrill of danger are not misguided, why are the poor who take far lower risks for much higher returns consid-

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ered irrational and in need of saving from themselves?

And again, if we could reach the general conclusion that selling a kidney is bad, the argument applies equally to donating one. If any aspect of organ selling is against the interests of the vendor, it is not the gaining of money but the loss of a kidney, and this loss is identical for donor and vendor. There is no reason to presume that whatever the money is wanted for must matter less to the vendor than saving the life of a relative must to a donor. The exchange of money is not even an indicator, let alone a determinant, of the difference between reasonable and unreasonable risk.

Harm to the recipient

Here the question is not of whether the purchasers are less well served than they ought to be but of whether they would be better off without the trade. Clearly most would not. Even if treatment carries a significant risk of disease, the alternative for most of these patients is certain death.

Furthermore, even if the risk were not worth taking in the present circumstances, that would be an objection only to the inadequacy of control rather than to the trade as such.

Collateral damage

The trade is alleged to be wrong because it treats parts of the body as purchasable commodities. We should, however, guard against the common trick in rhetoric of using a term carrying derogatory overtones without proving the grounds for such condemnation. A fundamental issue of autonomy is involved here. Treating people as commodities - with no say in their destinies - is vastly different from letting them decide for themselves what to do with their own bodies. Whilst it may be degrading to be in a state where organ selling is the best option left, this does not mean that actually selling the organ worsens the degradation. On the contrary, many vendors may feel an increase in self-respect after what is perceived as a duty done.

The argument that such trade will invite social and economic corruption is difficult to support as all available evidence only goes to show that these, in fact, follow prohibition.

It is said that if organs are bought from living vendors there will be no incentive to overcome resistance to transplantation using organs from cadavers, because people in positions of power will be able to buy kidneys and will have no incentive to press for the cadaver programme. But it might be equally claimed that since these very people are the ones who will respond with disgust to the trade, its continuation might induce them to press even harder for change.

Exploitation

An objection of a different kind is that the trade must be stopped because it involves exploitation. The poor are vulnerable to exploitation and they should be protected. Stopping the trade, however, is still taking away the best option of the poor, which makes it rather like trying to end the miseries of slum dwelling by bulldozing slums or stopping the problems of ingrowing toenails by chopping off feet. We put an end to that particular evil, but only at the cost of making things even worse for the sufferers.

If our aim is the protection of the poor and we lack the will or the power to remove the poverty that makes them exploitable in the first place, the next best thing is to subject the trade to stringent controls.

Conclusion

I find trade in organs as intuitively repugnant as does everyone else but strong feelings of a moral kind, by themselves, cannot form reliable guides for action. Remember the traditional reactions to inter-racial marriage, unfeminine women and homosexuality - themselves now widely regarded as repugnant? If we find the trade repugnant because of the harm it does to vendors, we must find the idea of making their situation worse by stopping the trade more repugnant. The worse we think it is to sell a kidney, the more repugnant should we find any objectively worse alternative. We should find it much more repugnant that the Turkish father should be forced to keep his kidney and watch his daughter die than that he should sell it and save her. We should also find our repugnance proportionately lessened if we could assure high standards of care that would make the harm minimal.

This does not prove conclusively that organ sales should be allowed; good arguments for prohibition may still be found. The fact that so many bad arguments are used, however, shows that good ones must be hard to come by, and it also suggests that our strong feelings of repugnance are systematically distorting our arguments. We are in effect treating the removal of our own feelings of disgust as more important than the real interests of the people on whose behalf we claim to be concerned. It is therefore morally essential to understand the power of these feelings so that we can think impartially about the problem.

In the meantime, until someone produces a far better argument than has yet appeared, there seems to be no escaping the provisional conclusion that the prohibition of the sale of organs does substantial harm of various sorts, that these have not been shown to be justified and therefore that we should not be trying to prevent the selling of organs but rather to lessen whatever harms are now involved and to increase the benefits to both vendors and purchasers by getting the trade properly regulated.