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The ethics of biomedical markets

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ARE REGULATED KIDNEY MARKETS MORALLY DEFENSIBLE?

Many arguments against kidney sales focus on a range of potential harms to would-be vendors, such as exploitation and coercion. Proponents of kidney markets, in response, contend that such harms could be adequately mitigated by instituting strictly regulated market structures. In a recent Feature Article, however, Simon Rippon argues that the mere pressure to vend, wherein impoverished individuals are compelled to sell kidneys in order to pay rent or alleviate debt, raises ethical concerns that cannot be addressed through market regulation. Rippon worries that permitting regulated kidney sales would lead to the commodification of organs that fetch significant compensation, normatively transforming how we relate to our and to one another's bodies. Luke Semrau (*see page 443*, Editor's choice) challenges Rippon's argument by introducing a distinction between the "pressure to vend," which refers to social and legal pressure specifically to sell a kidney, and "pressure with option to vend," by which he means the general social and economic pressure that causes one to seek avenues for securing additional funds, which may (or may not) lead one to entertain selling a kidney. Semrau maintains that although the pressure to vend is subject to Rippon's critique, pressure with option to vend escapes it. His key contention is that pressure with option to vend would not inevitably or even probably lead to a widespread pressure to vend, nor would it be likely to change how we relate to our and others' bodies, so long as the recipients and vendors in a kidney market live in the same geopolitically restricted region. He appeals to preliminary empirical data in support of the claim that such a bounded market structure would keep rates of vending—and hence vending pressures—sufficiently low to diffuse the most serious objections yet raised to the creation of regulated kidney markets.

SHOULD DISABLED PERSONS BE EXEMPT FROM LEGAL PROHIBITIONS OF PROSTITUTION?

Prostitution is another contentious topic that compels us to delve into the ethics of market regulation. Markets in sexual services, like markets in organs, implicate a

complex set of moral issues relating to coercion, exploitation, commodification and freedom, which in turn hinge on unresolved empirical questions. Assuming for the sake of argument, however, that a general legal prohibition on purchasing sexual services is morally warranted, a question then arises as to whether we have strong reasons to create a legal exemption from this prohibition for people with certain disabilities. Frej Thomsen (*see page 451*) explores the ethical interface of prostitution and disability studies, examining three potential arguments in favor of a legal exemption. One argument is premised on the existence of a moral right to fulfill one's sexual desires (which applies equally to abled and disabled persons); one is grounded in the principle of beneficence (according to which the loss of wellbeing from a prohibition on purchasing sexual services is greater in the case of relevantly disabled persons than it is for abled persons); and one is based on the principles of luck egalitarianism (according to which it is unjust that certain disabled individuals are unable, through no fault of their own, to fulfill their basic sexual needs). Thomsen concludes that the latter two arguments offer weighty moral reasons in favor of a legal exemption. One wonders two things, however: (1) whether Thomsen's rationale can be limited to relevantly disabled people (as opposed to all people who have great difficulty fulfilling their sexual desires), and, assuming it could be so limited, (2) whether the implementation of such a legal exemption is plausible. As to (2), questions about the practicalities of implementation are not analytically separable from the question of legal exemption. Arguments that the law should change must take into account social practicalities that could undermine enforcement of the law, distort its scope of application, or lead to unintended negative consequences. Creating a legal exemption for disabled persons in the case prostitution would require that a market in sexual services were permitted in the private sphere and/or subsidized by tax-payer money for the sole purpose of providing sexual services for relevantly disabled individuals. This, in turn, would require not only that the conceptual basis of specifically sexual or

sex-related disabilities be fleshed out, but also that we develop reliable means of assessing relevant disability and providing for the monitoring of legal prostitution businesses to ensure that sexual services are only targeted to and used by the relevantly disabled. Thus, even if an exemption to the prohibition of prostitution were morally justifiable in theory, restricting a burgeoning sexual services industry to its intended scope of application (the relevantly disabled), and avoiding the high probability of abuse, would be a daunting, unenviable, and possibly Sisyphean task for all branches of government.

MOTHERHOOD AND SURROGACY

Host surrogacy is another area of biomedical ethics that raises issues of exploitation and commodification, in this case in the context of reproductive services. The U.K. Human Fertilisation and Embryology Act holds that in the event of a breakdown of a surrogacy arrangement, only the surrogate, who gestated the child and brought the child to term, shall be considered the mother of the child for purposes of law. In other words, in failed host surrogacy arrangements, and probably throughout the duration of such agreements, the genetic mother is effectively accorded the status of an egg donor. Stuart Oultram (*see page 470*) argues that the commissioning mother should be considered a legal mother of any child that results from the surrogacy arrangement, though not, he maintains, to the exclusion of the surrogate mother. Oultram examines the rationale for tying legal motherhood to gestation, which includes participating in the physical creation of the child, emotionally bonding with the child, and coming to identify with the interests of the child prior to his or her birth. He argues that each of these rationales apply with equal force to the commissioning mother, leading to the conclusion that both the commissioning mother and the surrogate mother should share legal motherhood status. Such a mutual arrangement raises some ethical concerns, such as in relation to the efficacy of the decision-making capacities of a unit comprised of more than two parents, as well as the psychological harms to the child that might result from the social stigma that attaches to non-traditional families. Nevertheless,

Oultram contends that these countervailing considerations are relatively weak and outweighed by the interests of the commissioning mother in playing a more central and legally recognized role in the life of any child born of a failed host surrogacy arrangement.

SUPPLEMENTS AND THE SPONSORSHIP OF SPORT

A less explored topic in the ethics of market regulation is the morality of advertising in the context of sport. Although participation in sport is associated with positive health outcomes, high profile sporting events are often sponsored by products that are high in fat and sugar, potentially creating an association between a healthy activity and unhealthy eating habits. Simon Outram (*see page 447*) examines the widespread sponsorship of sport by health supplements and sports drinks. He argues that although the health risks associated with these products are negligible when compared to tobacco and alcohol use, there is a genuine concern that the positive, altruistic qualities of sport will be attributed to the sponsored products, undermining a healthy skepticism of advertisement for a class of products that are of questionable health value. Furthermore, he contends, certain “sports” drinks and supplements

could come to be perceived as integral to the sport they sponsor or to success within it. This may be especially problematic insofar as this perception is extended to non-elite participation in sponsored sports, for which many of these products have not yet been shown to be efficacious. Outram concludes that pending empirical results of product efficacy, sporting organizations should review their association with a wide range of product lines that are of dubious health or sport value.

SARTORIAL ETHICS: IS PHYSICIAN ATTIRE A MORAL MATTER?

Many professional practices have moved in recent decades toward less formal styles of dress. Should the medical profession follow suit? Are there ethical reasons for maintaining a more rigorous dress code for physicians, such as the classic white coat and tie, which go beyond the requirement of good hygiene? César Palacios González and David Lawrence (*see page 433*) consider whether there are ethical reasons for medical doctors to adhere to certain codes of dress that are associated with the *dignitas* of the profession and that convey an air of gravitas, responsibility and competence. Responding to a recent article published in *The BMJ* criticizing some UK physicians for dressing in a ‘scruffy’ and unprofessional manner, the

authors point out that empirical data investigating how dress mediates perceptions of competence among patients and health-care professionals is at present inconclusive. But even if empirical studies did decisively show that patients and doctors perceived more formally dressed physicians as more responsible and competent than their informally dressed counterparts, it is not clear that the medical profession should submit to and thereby reinforce these potentially problematic perceptions. As the authors note, inferring professional competence from manner of dress is epistemically problematic. Nevertheless, the broader social question, it seems to me, is whether there are moral reasons to break down the long-standing connections between the formality of dress, socioeconomic status, and professional epistemic superiority that may serve to reinforce social inequalities and undermine patient autonomy. If this is right, then the central ethical problem in relation to physician codes of dress arises not, as the authors would have it, out of the conflict between the autonomy of physician sartorial choice, on the one hand, and perceptions of medical competence, on the other—but rather, from the broader social structural inequalities that may be reinforced by the promulgation of these perceptions.