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Debate

# The kidney trade: or, the customer is always wrong

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## Author's abstract

*Much of the opinion scandalised by recent reports of kidneys being sold for transplant is significantly inconsistent. The sale of kidneys is not substantially different from practices espoused, and indeed endorsed, by many of those who condemn the former. Our moral concern, I suggest, needs to focus on the customer's actions rather than the seller's; and on the implications for larger questions of the considerations to which this gives rise.*

When it was discovered last year that a human kidney transplanted into a private patient at the Humana Wellington hospital in London had been sold by a Turkish peasant rather than donated by a kindly relative, nearly everyone was duly scandalised: politicians of all parties; the BMA; the hospital authorities; and the press all unreservedly condemned the sale of human organs for transplant (1). Protestations of unwittingness on the part of some of those most closely concerned were also duly made, but their credibility was enhanced neither by later reports that this had not been an isolated case, nor by the subsequent revelation that advertisements had appeared in a newspaper seeking people willing to sell a kidney (2).

Among those scandalised was of course the Government, a junior health minister somewhat naively declaring that the sale of human kidneys was not only 'abhorrent' but also 'undesirable' (3), and the Prime Minister following suit. Now, there is clearly something peculiarly ironic about free marketeers, passionate advocates of 'enterprise culture', objecting to people making the best use of their assets in such an enterprising way. Indeed, the businessman who wanted to set up organ transplant agencies as an extension of his adoption business, arguing that selling a kidney was an entirely reasonable way of making money (4), was perhaps genuinely taken aback at the negative response to his proposal, the Government remaining publicly unimpressed by this particular manifestation of the spirit of free enterprise. Questions

of hypocrisy aside, however, just what, if anything, is really objectionable in such a transaction? Why should obtaining, for example, a kidney, have to remain a matter of donation, as in the case – in Britain but not the USA – of blood for transfusion? What is it about selling a part of one's body that people consider so reprehensible?

If it is reprehensible, then the reasons for its being so must reside either simply in the transaction's being a commercial one, or in the nature of what is bought and sold, namely a part of one's body. Since the commercial nature *per se* of such transactions seems an unlikely candidate as the root of objections to it – Marx's moneyless utopia seems an all too unfashionable vision – it must be something about the commodity involved, a human organ, which constitutes the problem. But what? It might assist in trying to get clearer about this if we compare the transaction in question with a (limited) range of arguably and differently comparable ones. In what follows, then, I shall draw attention to certain similarities between selling and buying a human kidney for transplant and other practices, without of course wishing to suggest that these outweigh the differences between them. However that may be, the point is that such similarities should both offer us pause and steer moral argument in the direction of the customer.

Would those who do not object to selling, as opposed to donating, blood for transfusion nevertheless object to the sale of a kidney (5)? Or conversely, if selling a kidney is thought to be 'abhorrent', then must similar judgements be made about the sale of blood? Are human kidneys significantly different from human blood, and in such a way as logically to demand different attitudes to their sale: or is the same attitude appropriate in both cases? The obviously relevant difference would seem to be that, compared to a pint of my blood, my kidney is physiologically far more important. For although, of course, the human body can apparently function satisfactorily on one kidney alone – hence live donors – nevertheless the organ is, unlike a pint of blood, not renewable: rather, its function is taken over by the one remaining kidney. Should that fail, of course, the donor, having already taken the risks associated with major surgery when the

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## Key words

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first was removed, is at very special risk. Voluntarily to divest myself of a kidney, whether or not for money, is clearly a bigger physiological step than selling or giving a pint of my blood. This, I suspect, may be why it is supposed that one is in some sense or other damaging the integrity of one's body in having a healthy organ removed. The point becomes clearer if one considers the removal of a part of one's body that is readily visible. Were I to give, or sell, a hand, say, or an eye, I would clearly have done something permanent to my body: and removing a kidney, whether or not for monetary gain, is much more like this than removing a pint of blood, the loss of which is only temporary. That said, however, it remains to be shown just what is wrong with voluntarily divesting oneself of part of one's body – after all, it is precisely its qualitative distinction from suicide or even self-mutilation that makes it possible for living people to donate an organ. If I have some special duty in respect of the integrity of my body, such as to make giving a kidney whilst alive an exception to the general rule, there seems to be no *obvious* reason why. Neither tradition nor aesthetics constitute a moral bedrock.

Further comparison might help take the argument further. Let us therefore consider, first, prostitution, and second, wage labour. Lest such analogies be thought inappropriate for the wrong reason, however, let me emphasise that the comparison is between a person buying a kidney to fend off sickness, or even to survive; the prostitute's customer who purchases her or his services to fend off say, profound sexual loneliness, or even, perhaps, in order psychologically to survive; and the employer who purchases a person's labour to fend off, say, the trauma of material equality, or even, perhaps, in order to survive as a capitalist. Now it might be thought that I am not comparing like with like: for the desire to live, unlike lust and greed, is hardly a sin. But that is just what is at issue. Is not the desire to live at *just any* price hubris of a very special order, almost, one might suppose, a necessary condition of other sins? Part, I suspect, of the outrage, or at least the queasiness, that many people feel about a person's hiring out his/her body for another's sexual gratification seems bound up with the idea of violation: after all, it is only to the extent that the payment concerned buys consent (and of course there is a crucial issue here about the very possibility of any such consent being genuine) that using a prostitute differs from rape. Is hiring one's body out significantly different from either selling a pint of one's blood or selling a kidney? Again, one factor that would appear to link it more closely to the former than to the latter is the matter of physical loss. Blood is naturally replaced; a kidney not; and although a prostitute's body is at least arguably violated (depending on the view taken of the difference payment might make *vis-à-vis* consent) no part of it is simply removed. In the absence of other plausible accounts, I would suggest that it is this which allows many people to suppose that selling one's kidney ought to be illegal, but that 'selling one's body'

– while perhaps distasteful, outrageous, immoral even – ought to be permitted. This speculation is, I think, somewhat confirmed by reflection on attitudes to people's selling their labour. Again, it is time, energy, often self-respect, and all too frequently a person's health which are in effect sold: and yet few people seem to suppose that there is anything wrong about this. Of course, the effects of wage labour on a person's body must not be too obviously pronounced: hence the Health and Safety at Work Act; hence, too, our tolerating conditions for others which we would not tolerate for ourselves, whether individually (as long as I am not clearing asbestos) or socially (as long as it is Filipinos in the sugar-cane fields or Taiwanese in the factories whose physical well-being is devastated by long hours in appalling conditions). Much more could be said here, of course: but my point is merely to draw attention to attitudes, rather than offer even the beginnings of the critique these matters deserve (6).

All I wish to do here is note that those who find selling one's labour in one way or another laudable, let alone permissible; prostitution perhaps distasteful, or even immoral, but not sufficiently so as to be made illegal; but who nevertheless oppose the legalisation of selling one's blood or kidney must have in mind an unease about explicitly and openly making a commodity of the human body or parts of it. Those conversely, who have no objection to selling blood but who yet oppose the setting up of organ transplant agencies must presumably be impressed by the distinction between selling a part of one's body that is easily replaceable and a part that is not, and the removal of which constitutes a clear risk. Those in the former category, however, have something to explain about the special place accorded a very crude distinction between blood and a kidney on the one hand, and one's whole body on the other; or between the deliberate violation of one's body, and the accidental or concomitant damaging of it – that is to say, between explicitly intended consequences and merely unavoidable ones. The first option, however, is unavailable: for it is entirely unclear that I am suffering more harm by selling a kidney than, for example, by renting out my body, especially with all the attendant risks of the latter. The second option of course turns on the distinction between effects and double-effects, a distinction which John Harris has once and for all exploded (7). If I know that an action will have such and such a consequence, then, whether explicitly intended or not, I am responsible for that consequence in taking the action concerned. It will not do, therefore, to insist that it is enough to 'be satisfied there is no duress. As far as anything else is concerned, I think it is not my brief. I do not think it is my business' (8). That the majority – and not least advocates of the free market – continue to comfort themselves with this distinction as a means of avoiding financially and politically unwelcome consequences is doubtless true, but hardly a justification. Those who really suppose that it is entirely acceptable that others should work

their way to relatively premature ageing or death from cancer, etc; provided that neither they nor their employer *intend* that they do so are merely rationalising their own comfort. So much, then, for what I think may fairly be described as the Establishment position – that espoused with varying degrees of inexplicitness by perhaps the majority, and certainly the majority of politicians and pundits who pronounce on these matters.

Those in the latter category, for whom the sale of blood but not of a kidney seems permissible, lay a heavier burden on replaceability than it can bear. If I can live perfectly well with just one kidney, why not sell the other, at least provided the risk I take is amply rewarded? After all, I can (temporarily) live with less blood in my body than the standard eight pints.

So far, then, it would appear that there are no very convincing reasons why people should not sell one of their kidneys. Does this mean that organ transplant shops should join the finance houses and estate agents in the High Street, or that private hospitals should be allowed to advertise for spare parts from people who need the money recipients are willing to pay? So long as the argument is conducted entirely in terms of the morality of selling, such conclusions are inescapable. Even questions of quality control could, as in other areas, be left to ‘the hidden hand’ of the market. But that is what is wrong with the whole *direction* of the arguments thus far adduced: they concern the degree of blame, if any, which should attach to the seller, that is, to the victim of the kidney trade.

What is required, however, is that we focus attention not on the seller – the victim – but on the customer. It is the customer, the generator of demand, who is always wrong in the sorts of transaction I have been discussing. The point about buying a pint of blood, or a kidney; renting someone’s body for an hour or two; or living off other people’s ill-health is that all these are forms of exploitation based on making a commodity of human beings. There are doubtless many who would disagree with my evaluation of these practices: but so far as they are concerned, there can be no good reason why, in all consistency, people in need of a kidney who can afford to pay the going rate should not be at liberty to buy one. Those who consider that such a practice ought not to be allowed are logically committed, whether they admit it or not, to similarly opposing the sale of blood, renting of bodies, and physical exploitation of labour. The extent to which the possibility of people’s buying a kidney represents the further commoditisation of human beings, to that extent the practice resembles prostitution, certain forms of surrogacy, and for example page three of *The Sun* in symbolising, partly constituting, and encouraging a moral climate within which the commoditisation of human beings proceeds apace. My point is that to argue against the purchase of a kidney is *a fortiori* to argue against all sorts of practice which some might wish to defend; and that if there is something wrong here, it lies in the buying, not the

selling. The sort of moral objection to such purchases itself becomes clear (although scarcely conclusive – that would require further and deeper argument) when descriptions of transactions are framed accordingly.

In conclusion, then, I offer merely the barest outline of how such an argument might look. That an opposite view implies accepting the practice of purchasing kidneys for transplant is of course intended as a *reductio* of such a view. For the moral point is not that no amount of money could possibly compensate for the loss of a kidney as the intended result of a transaction freely entered into, although I might be inclined to question just this *caveat*; but that the debate is morally skewed by putting it in these terms. It is the *kind of action* such a purchase constitutes which is at issue, not how much the buyer pays.

This, then, is the sort of argument I suggest is apposite. It is not the slum-dweller struggling way below the poverty line who is to blame for selling his or her blood: if blame is justified, it lies with the person who buys it, thus supporting and helping to entrench an economic and social system where life can be bought at the right price. It is not prostitutes, female or male, who sell their bodies on street corners in prosperous cities because Kafkaesque social ‘security’ laws leave them little alternative who merit censure, but, if anyone, the people who rent their bodies. It is not waste disposal workers, train drivers or ambulance workers who deserve blame: it is, if anyone, all those who live off their suffering. It is not, then, the Turkish peasant selling a kidney for £2000 who is committing some gross moral indecency: rather it is the recipient who knows that he or she can have whatever their money can buy, together with the latter’s supporting cast – the doctors who profit from the deal; the owners of the private hospital concerned; the proponents of a market view of medicine; and finally the ideologues of wealth, themselves often the very people who rush to condemn the sale of kidneys.

The *purchase* of kidneys for transplant differs from the purchase of blood, renting of a body, or purchase of another’s health, however ‘unintentional’, only in its symbolising the nature of all these transactions. Perhaps that is why it raises such a furore – just as Shylock might do in bringing home to an audience truths about the society they live in. And perhaps that is why some of those with the greatest political stake in the *status quo* rush to condemn such transactions, lest their epitomising the delights, as well as the rigours, of free-market medicine becomes too obvious. To the extent that moral censure complements political and economic analysis, it is the customer who is always wrong.

### Acknowledgement

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## References and footnotes

- (1) See for example MacKinnon I, Kelsey T. Turkish peasant 'duped into donating kidney'. *The Independent*, 1989 Jan 18: 2 (cols 1-3); Schoon N. Inquiry into 'paid kidney donors'. *The Independent* 1989 Jan 23: 1 (cols 2-5); Anonymous. Ask, don't pay, for kidneys [leader]. *The Independent* 1989 Jan 23: 16 (cols 1-2). See also, for subsequent developments: Ballantyne A, Howard J. Kidney deal claim alarms surgeons. *The Guardian* 1989 Jan 28: 3 (cols 1-2); Hoyland P, Boseley S. Dealer offers £20,000 for kidneys. *The Guardian* 1989 Jan 30: 3 (cols 1-2). Ballantyne A. Kidney sale clinic bans two doctors. *The Guardian* 1989 Feb 8: 3 (cols 7-8); and Milne S, Howard J. Turks 'caught up in kidney trade'. *The Guardian* 1989 Feb 13: 2 (cols 1-4)
- (2) Johnson A, Ballantyne A, Milne S. Doctor linked to kidney-for-cash advert. *The Guardian* 1989 Feb 15: 1 (cols 3-6); and Milne S. Surgeon resigns from kidney post. *The Guardian* 1989 Feb 17: 20 (cols 1-2).
- (3) BBC Radio 4, 'The World at One', 1989 Jan 22.
- (4) Hoyland P. £20,000 offer by German dealer in kidneys. *The Guardian* 1989 Jan 30: 20 (col 5): Rainer René Graf Adlemann zu Adelmansfelden is quoted as saying: 'My clients are businessmen who have a certain standard of living which they wish to improve and they are willing to sell a kidney to achieve it. I also have clients about to retire who want to buy an apartment in the sun, and selling a kidney is the answer.' See also Boseley S, Tomforde A. Kidney dealer's baby trade is shut down. *The Guardian* 1989 Jan 31: 2 (cols 1-3).
- (5) For a vigorous attack on Richard Titmuss's classic *The gift relationship*, London: Allen and Unwin, 1970 see Stewart R M. Morality and the market in blood. *Journal of applied philosophy* 1984; 1,2: 227-237.
- (6) 'Exploitation', of course, is a complex concept, proper analysis of which would require far more space than is available here. I deal with an argument analogous to that suggested in this paper in Surrogacy, liberal individualism, and the moral climate, in Evans J D G ed. *Moral philosophy and contemporary problems*. Cambridge: CUP, 1987.
- (7) Harris J. *The value of life*. London: Routledge, 1985: 43ff.
- (8) Dr Raymond Crockett, lately medical director of the National Kidney Centre, and consultant at the Humana Wellington hospital, quoted in *The Independent* 1989 Jan 18. (See reference (1)). The professional conduct committee of the General Medical Council began formally investigating his actions in December 1989, together with those of his colleagues Mr Michael Bewick and Mr Michael Joyce. Each doctor was judged guilty of serious professional misconduct. The committee directed that Dr Crockett's name should be erased from the Medical Register; that Mr Joyce should continue to be registered but subject to certain conditions, which would automatically expire after two years; and that Mr Bewick should continue to be registered subject to certain conditions which would apply for three years. At the end of the three years the committee will review Mr Bewick's case. In November 1985 the GMC endorsed a report from its standards committee which recommended that the council should issue "advice to the profession that it is unethical and improper for a registered medical practitioner, wittingly or unwittingly, to encourage or to take part in any way in the development of such trafficking in the sale of human organs; and that accordingly, no surgeon should undertake the transplantation of a non-regenerative organ from a living donor without first making due inquiry to establish beyond reasonable doubt that the donor's consent has not been given as a result of any form of undue influence".

## News and notes

### Call for papers

The journal, *Bioethics*, is calling for papers on the human genome project, for a special issue next year.

Among the ethical questions raised by the project, say the editors of *Bioethics*, are the following:

Will this knowledge lead to pressure for new and more scientific eugenics programmes? Would all such programmes be undesirable? If not, how should we draw the line between ethically acceptable and ethically unacceptable eugenics? Who should make and enforce decisions about where this line is to be drawn?

What are the ethical aspects of the potential implications of the project for genetic screening of the population, either for the benefit of the individual concerned (to identify health risks, for example) or for the benefit of the State or the employer? What rights does the individual have in this situation, and how are they to be protected?

Is scientific knowledge ever so dangerous that it is better not to obtain it? If so, could the knowledge

obtained by the human genome project fall into this category? Or do the suggested benefits of the project outweigh any risk of misuse? On what basis can such questions be answered?

*Bioethics* is seeking major articles, reports, short discussion papers and book reviews on these or any other ethical aspects of the human genome project. These contributions may be from any relevant discipline. In the case of reports and book reviews, it is suggested that potential contributors contact the editors first to ensure that they are not duplicating other work that has already been solicited. Other contributors who are in doubt about whether their topic will be suitable for the issue are also invited to send an outline of their work.

The deadline for submission of papers is January 15, 1991. Correspondence to: Editors, *Bioethics*, Professor Peter Singer and Dr Helga Kuhse, Centre for Human Bioethics, Monash University, Clayton, Victoria 3168, Australia.