

# Imposing options on people in poverty: the harm of a live donor organ market

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## ABSTRACT

A prominent defence of a market in organs from living donors says that if we truly care about people in poverty, we should allow them to sell their organs. The argument is that if poor vendors would have voluntarily decided to sell their organs in a free market, then prohibiting them from selling makes them even worse off, at least from their own perspective, and that it would be unconscionably paternalistic to substitute our judgements for individuals' own judgements about what would be best for them. The author shows that this '*Laissez-Choisir* Argument' for organ selling rests on a mistake. This is because the claim that it would be better for people in poverty to sell their organs *if given the option* is consistent with the claim that it would be even better for them to not have the option at all. The upshot is that objections to an organ market need not be at all paternalistic, since we need not accept that the absence of a market makes those in poverty any worse off, even from their own point of view. The author goes on to argue that there are strong theoretical and empirical reasons for believing that people in poverty would in fact be harmed by the introduction of a market for live donor organs and that the harm constitutes sufficient grounds for prohibiting a market.

Should a market in organs such as kidneys, pieces of liver and pieces of lung from living donors be legally permitted? One form of argument in favour crops up frequently. As Julian Savulescu puts it:

People have a right to make a decision to sell a body part. If we should be allowed to sell our labour, why not sell the means to that labour? If we should be allowed to risk damaging our body for pleasure (by smoking or skiing), why not for money which we will use to realise other goods in life? ... To prevent [people] making these decisions is to judge that they are unable to make a decision about what is best for their own lives. It is paternalism in its worst form.<sup>1</sup>

As Janet Radcliffe Richards and several eminent coauthors write:

The commonest objection to kidney selling is expressed on behalf of the vendors: the exploited poor, who need to be protected against the greedy rich. However, the vendors are themselves anxious to sell, and see this practice as the best option open to them. The worse we think the selling of a kidney, therefore, the worse should seem the position of the vendors when that option is removed.<sup>2</sup>

And again:

Even if vendors and recipients would always be at risk of exploitation, that does not alter the fact that if they choose this option, all alternatives must

seem worse to them. Trying to end exploitation by prohibition is rather like ending slum dwelling by bulldozing slums: it ends the evil in that form, but only by making things worse for the victims. If we want to protect the exploited, we can do it only by removing the poverty that makes them vulnerable, or, failing that, by controlling the trade.<sup>2</sup>

As Gerald Dworkin explains:

There are certainly objections of justice to the current highly unequal income distributions. But it seems to me paternalistic in the extreme, given that injustice, to deny poor people choices which they perceive as increasing their well-being.<sup>3</sup>

And as Sarah McGrath writes:

We think nobody should have to choose between ... going hungry and selling her body parts. It seems that there are some goods or services such that no one should ever have to choose between selling them and suffering some severe hardship ... But ... what makes such situations terrible is not that selling the good in question is an option that people have. Instead, what is terrible is that people lack other options or incentives ... Let us ask whether it is possible to make someone ... worse off by offering her more options. If we are facing starvation, and someone comes by in an organ trading ship offering us the opportunity to sell our kidneys as the only way to secure rescue, has that person made us worse off? Intuitively, she has not. The point is that consideration of terrible choice situations does not, by itself, motivate restricting the options people have.<sup>4</sup>

These points appear, at first appraisal, to provide for a powerful defence of a legal market in organs. The argument may be presented somewhat more formally as follows:

- P1. People in poverty who would choose to sell their organs if a free market existed must regard all other options open to them as worse.
  - P2. If we take away what some regard as their best option, we thereby make them worse off, at least from their own perspective.
  - P3. If a policy makes some worse off from their own perspective, it would be paternalistic for us to judge otherwise and to implement the policy on their behalf. We ought not to be paternalistic in this way.
- Therefore, we ought not to prohibit organ markets for the supposed good of those in poverty who would choose to sell their organs if a free market existed.

I call the above the *Laissez-Choisir Argument* or the LC Argument for short. Its proponents need not be free market capitalists who advocate an organ market that is entirely free of state regulation (*laissez-faire*). What they are committed to is the idea that, if we are concerned about the plight of



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potential vendors, then there are decisive welfarist or antipaternalist reasons for letting them choose for themselves whether to sell by giving them the option to do so (hence *laissez-choisir*).

I will argue that the LC Argument fails because its second premise is false and, moreover, that it is in fact the case that we ought to prohibit a live donor organ market for the good of people in poverty. Two of the authors quoted above have, rather ironically, made important contributions to identifying the foundations of the type of argument I will outline here. Dworkin wrote a well-known paper identifying ways in which options can be bad for those who have them (a point which undergirds the objection laid out here) long before writing the paper on organ markets quoted from, yet he did not connect the two subjects together in any significant way.<sup>5</sup> Richards in earlier work anticipated the first part of the argument I will lay out, writing of a possible objection to permitting kidney selling from 'higher level preferences' that, unlike all the others that she dismisses, 'has a potential for success'.<sup>6</sup> However, she provisionally dismissed that objection on the grounds that the burden of proof is on those who would seek to curtail people's options, and it had not yet, in her opinion, been convincingly met. While this paper suggests a way to satisfy Richards' burden of proof, it is not clear why it should be accepted (ie, why there should be any presumption in favour of adding new options), given the argument I lay out below.

I will make a positive argument that a live donor organ market should be prohibited because giving people in poverty the option to sell their organs would itself impose an impermissible harm on them. However, even if my positive argument is ultimately deemed unsuccessful, establishing the mere possibility of a successful argument of this kind will show that the second premise of the LC Argument cannot be maintained. Though some poorly-formulated objections from exploitation can be countered in the kinds of ways Richards *et al* suggest, they overstate their case in suggesting that prohibition could not possibly make things better for the poor.

### WHY THIS IS NOT AN ARGUMENT FROM THE INTRINSIC WRONGNESS OF SELLING ORGANS

Before explaining my own response to the LC Argument, I want to highlight a different possible objection to it in order to distinguish it from my own, and set it aside. You might think that buying or selling bodily organs is intrinsically wrong. If you also think that paternalism is justified when people mistakenly think they would be better off engaging in intrinsically wrong activities, then the LC Argument might not be persuasive to you.

However, setting aside the question of whether such paternalism is justifiable, I know of no good reason for believing that there is anything intrinsically wrong with buying or selling organs. It is certainly difficult to imagine any plausible explanation of the wrongness of selling organs that would not equally count against giving them away. It is true that these two types of act differ in that giving organs away is presumably motivated altruistically, whereas selling need not be—but it is not usually considered intrinsically wrong to act from non-altruistic motives. Even if giving organs away is morally better than selling them, it is implausible to suggest that we therefore ought to encourage donation by banning selling entirely, when the cost of doing so might be measured in the loss of thousands of innocent lives due to an inadequate supply of organs. For this reason I will set aside this objection to organ markets, and turn to another. My objection will not depend on the claim that there is anything intrinsically morally wrong with selling or buying organs.

### HOW HAVING AN OPTION MAY HARM

My objection to the LC Argument starts from the following claim: *Sometimes you can harm people by giving them an option that they would be better off taking*. Most obviously, this can be true in cases where the addition of an option would make it more difficult or costly to perform the reasoning necessary to reach the right decision. For example, if I were to dial the emergency number in England having suffered a heart attack, the operator would ask me which emergency service is required. If I ask for an ambulance, I would not be offered further options of which particular model of vehicle is to be dispatched. If I *were* offered options, perhaps I would be better off taking some such option than I would be with whatever would have been provided to me by default—perhaps a Ford vehicle would be better because it would be more reliable than a Mercedes, or faster, or better equipped to deal with my particular emergency, for example. But I have little knowledge of the relative merits of alternative ambulances, and my chances of choosing the best option in these exigent circumstances are not very high. For each additional option provided, there are clear costs: increased time and other resources will be needed in order for me to choose between my options, and the chances of my decision being optimal may well decrease as more options are added.

You can harm people by giving them an option that they would be better off taking, in cases of the above kind, because the addition of the option makes it more difficult or costly to perform the reasoning necessary to reach the best decision. But I am not going to argue that a market in organs would harm people in poverty because the addition of the option of selling an organ would make their decisions more difficult or costly. My objection would still hold, even if—as I will assume for the sake of argument—those in poverty would always make the best possible decisions about whether and when to sell their organs, even if their reasoning would be instantaneous and effortless, and even if they would often be fully rational in choosing to sell when they did. In this respect, the present argument differs from autonomy-based or exploitation-based critiques of organ markets where the worry is that poor vendors might make 'self-defeating' or otherwise irrational decisions as a result of being 'unable to resist the temptation' of selling their organs in a free market.<sup>7</sup>

The suggestion that giving people an option could still harm them even when it does not impinge on their decision-making seems paradoxical because of the following widespread assumption: that it is always good, or at least that it is never bad, for you to have additional options, so long as the addition of options does not impinge on your ability to choose rationally. But this assumption is mistaken. In the case of a legal market for live donor organs, I will argue that having the option to sell an organ may result, in circumstances which are predictably common among those in poverty, in individuals being held to account by others for taking and, more importantly, for failing to take the available option. I will also argue that people in poverty would be significantly harmed by being held to account in these predictable ways, with respect to the sale of their organs. We would thus harm people in poverty by giving them the option to sell their organs not because *taking* the option would be bad for them, but rather because *having* the option subjects them to predictable harms.

Before turning to the organ market specifically, I will first use some examples from other fields to show that it is not always good for you to have additional options, even when they do not impinge on your rational decision making ability. As Dworkin

has noted, you may have a number of different reasons for wanting to have fewer options open to you, including strategic reasons.<sup>5</sup> For example, imagine a cashier at a rural filling station that is potentially vulnerable to an overnight robbery. It may be better for the cashier to have no key to the safe (and to have a prominent sign displaying that information) than for the cashier to have the key which gives him the option to open it. Possession of the key would make the cashier vulnerable to threats, and the filling station worth robbing. To take another example of this kind, a union leader who can truthfully assert that the members simply will not vote for the deal on the table may be in a far better negotiating position than he would if he instead had the option to persuade the members to accept the deal.<sup>8,9</sup>

Additional options, even if they are not taken, can also be bad for you because they negatively alter the character of the situation that you find yourself in or the character of the options that you already had. For example, imagine a middle class journalist who goes undercover for a period to see what life is like for those living week to week on minimum wage (perhaps in order to prove that the minimum wage is perfectly adequate and that scraping by on it is not so bad). Others can rightly point out that the journalist's situation is not directly comparable with that of a normal person on minimum wage, because the journalist always has the option to go back to her secure middle class life. The existence of this option—even if she never takes it—is in an important sense undesirable for the journalist because it undermines her ability to truly experience life as the other half live.

Here is a second example of this kind, which is related by Dworkin.<sup>5</sup> When Richard Titmuss comparatively examined blood donation systems in his groundbreaking work *The Gift Relationship*, he concluded that introducing a market in blood has the paradoxical effect of reducing overall supply by 'crowding out' altruistic motivations for donating.<sup>10</sup> We might wonder *why* this occurs, if the changes merely permit the selling of blood in a market, and do nothing to prevent others from giving it away, just as they had done before. It may seem that a market in blood just provides people with an additional option of being rewarded financially for blood, and leaves the situation of those who do not wish to participate in it unchanged, apart from the availability of a new option that they can choose not to take. But this view ignores the way in which additional options may change the character of the options you already have. As Dworkin points out, the crowding out that Titmuss observed can plausibly be explained by the fact that the introduction of the new option of selling blood changes the nature of the old option of giving it away, in the following manner: If blood can be bought and sold as a commodity, then providing it as a gift in effect just saves the recipient the financial cost of purchasing the same. Such a gift has a much lesser significance than would a life-saving gift that cannot be bought or sold at any price. It should therefore be no surprise that commodifying blood might reduce the altruistic motivation for providing it, rather than merely supplementing people's altruistic motivations with additional financial ones.

While Titmuss's claims have been critiqued and questioned by a number of authors over the past 40 years, social scientists have convincingly demonstrated similar crowding out effects across a broad range of contexts both by observational studies and experimentally (for a survey of these results, see Frey and Jegen<sup>11</sup>). Titmuss's hypothesis that cash incentives can crowd out blood donors has also been recently confirmed experimentally.<sup>12</sup>

Defending a kidney market, Benjamin Hippen has claimed: 'If an organ market does not prevent supererogatory action, and

altruistic donation is supererogatory, donors whose dominant motive is altruism should not be dissuaded from donating.'<sup>13</sup> The foregoing discussion about blood procurement shows this to be a non-sequitur. Crowding out of altruistic organ donations might well occur if a parallel market in organs were introduced; a plausible explanation for this is that the existence of the market would change the character of the potential gift that is available to be given.

The above lessons about the possibility of strategic reasons for preferring not to have options, and about the ways in which additional options can change the character of old ones, show how additional options can be bad for those who have them—irrespective of whether they impinge on our decision making capacity, irrespective of whether the new options are in fact taken, and even if, given the new options, we are much better off taking them. Applied to the case of a market for organs, the lesson is this: even if it is true that every particular transaction in the market would make all participants in the transaction better off than they would be if they passed it up, permitting a market might still provide (or, more accurately, impose) options that some people would, if they were rational, prefer not to have. Imposing such options might therefore harm them.

The mere possibility that the options imposed by a market in organs could harm people in poverty is enough to show that the second premise of the LC Argument is mistaken. It could well be the case that people in poverty would be worst off if they have the option of selling their organs and do not take it, better off if they have the option of selling their organs and take it, and best off if they lack the option altogether. Moreover, these people might well make the judgement that they would be better off without the option, and prefer not to have it. For this reason, our opposition to an organ market need not be rooted in any form of paternalism.

In the rest of this paper, I will make the case that the options provided by a legal market in live donor organs *would* in fact harm people in poverty significantly, and that these harms give us sufficient moral reason to prohibit such a market.

#### WHY AN ORGAN MARKET WOULD HARM PEOPLE IN POVERTY

Let us begin with the observation that the introduction of a legal market in bodily organs would allow many of us an additional option to get cash that we would not otherwise realistically have. We should then also recognise that the introduction of this option would fundamentally change the norms of the relationships of each of us to our bodily organs and to each other. As things stand currently, organs do not generally have a monetary value for their owners. But if organs can be easily exchanged for cash they will then become *commodified*, and naturally subject to the kinds of social and legal demands and responsibilities that govern our other transactions in the marketplace. For example, faced with a rent demand and inadequate cash to pay for it under the *status quo*, a couple of the choices you could make currently would be to sell some of your possessions, or to find (additional) employment and sell some of your labour. One choice that most of us do not realistically have as things stand (and therefore do not have to consider) is to sell an organ to raise the funds. This means that even if you have no possessions to sell and cannot find a job, nobody can reasonably criticise you for, say, failing to sell a kidney to pay your rent. If a free market in organs was permitted and became widespread, then it is reasonable to assume that your organs would soon enough become economic resources like any other, in the context of the market. Selling your organs would become



something that is simply expected of you as and when financial need arises. Our new 'option' can thus easily be transformed into a social or legal demand, and it can drastically change the attitudes that others adopt towards you. In another context, Dworkin puts the point nicely:

Once I am aware that I have a choice, my failure to choose now counts against me. I now can be responsible, and be held responsible, for events that prior to the possibility of choosing were not attributable to me. And with the fact of responsibility comes the pressure (social and legal) to make "responsible" choices.<sup>5</sup>

My contention, then, is that because people in poverty often find themselves either indebted or in need of cash to meet their own basic needs and those of their families, they would predictably find themselves faced with social or legal pressure to pay the bills by selling their organs, if selling organs were permitted. So we would harm people in poverty by introducing a legal market that would subject them to such pressures.

Are the harms at stake significant enough to prohibit a market in live donor organs? Oddly, when Dworkin himself writes about organ selling about a decade after having done much to elucidate the ways in which options can be bad for you, he only gives cursory consideration to the question of what harms would arise from these new options and how significant they might be. He admits that once a market price for organs is established, 'individuals may choose not to sell [organs] in the knowledge that they have made a choice which leaves their family worse off economically than they might have been,' and says that this may have a 'psychic cost'.<sup>3</sup> But this cost, he thinks, pales in comparison with the 'psychic costs that are incurred by individuals and their families who face ... death as a result of an inadequate supply of organs.' Dworkin also identifies a second psychic cost, where if we assume that organs from family members are preferable because of tissue matches, then 'introducing markets is likely to strain family relations' because '[f]amily members are likely to be resentful of being asked to contribute without compensation when a stranger would receive substantial payment.' But he speculates that developing immunosuppressant technology will overcome this problem.

But we should not limit our consideration of the potential harms imposed by the market to Dworkin's psychic costs alone. Once we have come to conceptualise our 'excess' organs and organ parts as pieces of unnecessary property by commodifying them, there would naturally follow genuine social and legal costs to pay for failing to sell them when economically necessary, just as there are social and legal costs to pay for failing to take employment when you are able to do so. We should ask questions such as the following: Would those in poverty be eligible for bankruptcy protection, or for public assistance, if they have an organ that they choose not to sell? Could they be legally forced to sell an organ to pay taxes, paternity bills or rent? How would society view someone who asks for charitable assistance to meet her basic needs, if she could easily sell a healthy 'excess' organ to meet them?

Such social and legal pressures do not merely impose psychic costs, and markets that introduce them can make large numbers of people considerably worse off. It is in view of the harms imposed by pressures like these that we think it necessary to enact restrictive laws for labour markets that stipulate, for example, minimum wages, minimum vacation days, parental and sick leave, and workplace safety standards, which cannot be contracted out of. These potential harms also provide us with grounds for enacting laws aimed at preventing commodification of other things, for example, laws against prostitution or against

selling our children (even into the most loving homes). Wherever there is great value in not being put under social or legal pressure to sell something as a result of economic forces, we should think carefully about whether it is right to permit a market and to thereby impose the option on everyone to sell it.

The prevalence of exploitation and the enormous impact of economic, social and legal pressure in real-world organ markets are supported empirically by research conducted by Goyal *et al.*<sup>14</sup> They surveyed about 300 people in Chennai, India, who had sold a kidney, on average 6 years prior to the survey. They found that 96% of participants had sold their kidneys to pay off debts, and received an average of only about \$1000 in return. Moreover, they found little evidence of any long-term benefit to the participants: their participants' average family incomes had declined by a third after nephrectomy, and three-fourths of them were still in debt at the time of the survey. Seventy-nine per cent of the participants would not recommend that others sell a kidney.

Anthropologist Lawrence Cohen independently drew the following conclusions based on his fieldwork on kidney selling in Chennai:

Persons sell a kidney to get out of debt, but the conditions of indebtedness do not disappear. All of the thirty Chennai sellers ... were back in debt again ... The decision to sell may be set for debtors by their lenders, who advance money through an embodied calculus of collateral value ... [T]he aggressiveness with which moneylenders call in debts may correlate with whether a debtor lives in an area that has become a kidney zone. If so, the decision to sell is a response not simply to some naturalized state of poverty but to a debt crisis that might not have happened if the option to sell were not present.<sup>15</sup>

Suppose that you are convinced that permitting a live donor organ market could in fact harm people in poverty significantly. You might now be inclined to argue that any such harm would, in any case, be clearly outweighed by the benefits of having an increased supply of life-saving kidneys and other organs, combined with potential economic benefits for the vendors. But we should beware of making crude consequentialist comparisons about such matters. To take an extreme example, we could adopt a general policy permitting us to abduct and cut up a healthy person in order to take his organs and save five others who are in desperate need of organ transplants. If we did so, we would be able to save five times as many lives as are lost, and increase general life expectancy. It would nevertheless be implausible to claim that such a policy is morally justified, and the best objection to it is that it would be unjust. We do not have a right to take a living person's vital organs against his or her will, even if the overall benefits of doing so would be significant. Similarly, before permitting an organ market, we must ask whether we have a right to subject people in poverty to significant harms of social and legal pressure to give up their organs, even if our doing so is the only means of achieving potentially large life-saving benefits, and even if vendors might themselves benefit economically. I submit that we have no such right.

### Could regulations avert the harm? No

Someone might reply to the foregoing argument that a *properly regulated* market for live donor organs could still be permitted. But it is difficult to see how regulation could prevent the kind of pressure in question, while still maintaining the organ supply. Suppose that a high minimum price for organs was set. This would prevent one sort of exploitation exhibited in Chennai, as everyone who sold an organ would be substantially

compensated for it. However, this would do nothing to address the problem that some might sell their organs out of economic desperation, rather than out of a choice made free from external pressure. Perhaps we could directly restrict the people given the option to sell organs to those who would not be subject to significant economic pressure to take it, for example, by restricting eligibility for organ selling to those above a certain percentile of the income scale. The problem is where to set the eligibility threshold: people high up the income scale can occasionally find themselves in desperate financial circumstances. If we were to set the eligibility threshold high enough to substantially avert this risk—say, above the 60th percentile—then it seems implausible that a market system would provide more organs than the current one, especially when we recall the significance of the crowding out effect that a market can have on altruistic transactions, as in the case of blood. Those who want to sell their organs are not generally motivated by the promise of obtaining luxury goods such as holidays, recreational flying lessons or cases of fine wine, but by economic desperation. Supposing instead that poorer people were permitted to enter the market, but were properly protected from social and legal pressures to sell their organs of the kinds mentioned above by specific regulations, it then becomes unclear whether significant numbers of them would still be motivated to sell their organs. How many of those in Chennai would have sold their kidneys if they were not permitted to use the proceeds—or did not need to use the proceeds—to pay their debts?

#### THE NATURE OF THE HARM OF AN ORGAN MARKET

I mentioned earlier that my argument would not depend on the claim that it is *wrong* for anyone to buy or sell organs. Nor does it depend on the claim that it is *bad* for sellers to lose an organ, or that this is in itself *harmful* to them. I have only depended on the claim that *social or legal pressure to sell an organ* is harmful to people, and that it is harmful to them in a way that makes it reasonable not to permit a system that would predictably lead to such harms. It is quite consistent to hold that being socially or legally pressured to X is a harm even though X-ing is not wrong, and even though X-ing does not (ordinarily) harm the person who Xs. To take a different example: I do not think that having sex with a celebrity (ordinarily) harms a person. And I do not think that it is wrong for people to have sex with celebrities. But I do think it would harm a person to be put under significant social or legal pressure to have sex with a celebrity.

Of course, if my argument is not to generalise to anything that could be traded on a free market, I must think that it is in some way *worse* to be socially or legally pressured to sell an organ as a result of economic forces than to be similarly pressured to sell some other things. Permitting people to sell just about anything can lead to some people—especially people in poverty—being socially or legally pressured to sell it. But if we were not free to sell anything, then nobody would enter into market transactions with us, and everyone would be made much worse off as a result. So why do I regard it as especially bad to be pressured to sell an organ, in comparison with many other things, such as pieces of ordinary property or some hours of labour?

The answer to this question appeals to two particular features of our relationship to our organs, and of what is involved in removing them. The first is the peculiar importance to human beings of our having fully autonomous veto control over any physical incursions on the intimate parts of our bodies by other people. It is psychologically important to us that our negative

right to exclude others from interfering with our physical bodies is protected. This is part of what explains our insistence on the principle of consent for medical interventions, our finding rape a particularly appalling crime and the way in which certain forms of physical torture strike us immediately as particularly dreadful, even if we have no reason to think that they are more psychologically painful or damaging than other methods of interrogation. It is our veto control over physical intrusions upon our bodies by others that matters here, not the physical acts in question: we may have no objection to the touching by others of parts of our bodies, or even to the taking of them, so long as we freely and autonomously choose this. The nature of this concern explains why a policy of state-sanctioned redistributive organ allocation from live donors would never find wide support. In contrast, organ donation, which is voluntary, and redistributive taxation, which is coercive but targets our property rather than parts of our bodies, are both broadly supported by the public.

The second important special feature of organ selling is the small but not insignificant life-changing risks involved (eg, in the case of nephrectomy: about 1 in 3000 mortality and rather higher morbidity risk).<sup>16</sup> It is plausible to think that people should be permitted to take significant risks whenever their actions flow from their own fully autonomous choices (as in cases of organ donation), but that it may harm them to put them under social or legal pressure to take equivalent risks. Sometimes the imposition of such harms could be all-things-considered justified—for example, if the country is fighting a just war and conscripts to the armed forces are necessary—but this would be conditional on a fair distribution of the risks. It does not seem fair to allocate these risks by way of market forces that de facto place nearly all the pressure to take them on those in poverty.

These two features together, I think, explain the special badness of market-driven social and legal pressure to sell organs, and go some way to explaining the intuitive but inchoate moral discomfort that many people feel about the idea of organ markets. The pressure to sell would be exerted not just on those in poverty who choose to sell their organs in a market system, but also on many of those in poverty who choose not to do so. I believe it provides us with a sufficient moral reason not to permit the sale of organs by live donors, even if such sales would increase the supply of organs overall.

#### WHAT IS THE ALTERNATIVE?

Someone might object to the foregoing argument as follows: Suppose that we continue to prohibit the sale of organs by live donors, and that this prohibition restricts organ supply. Then the only hope for many potential transplant patients will be for a non-compensated donation, and they might in particular hope to receive an organ from a family member or friend. But is this situation not likely to impose immense social pressure on those family members and friends to donate, and is this not just as bad as the economic pressure from which I am concerned to protect those in poverty?<sup>17</sup> My answer is that such pressures certainly could be harmful, but not as harmful as the pressures that would bear on those in poverty if selling were generally permitted, for several reasons.

First, the familial pressures apply to a much smaller group of people, people who are often strongly motivated to donate of their own accord by altruism towards their friends and family. Whereas the social and legal pressures that would arise if organs were commodified would apply generally to people in poverty who had organs worth selling, these familial pressures to donate

would only apply to the families and close friends of those needing organs.

Second, familial pressure of this kind is generally tempered by the fact that our organs are not presently commodified. Our prohibition on selling is a social expression of the value we place on having fully autonomous control over physical incursions on our bodies, and in particular on keeping live donors free from pressure to give up their organs. While some individual family members may exert pressure on others to give up organs, their stance is unlikely to be supported by any wider social group, because others will see organ donation as a matter on which individuals must make their own decisions, free from undue influence.

Third, any familial pressure under the status quo can, to a large extent, be cut-off by sympathetic medical professionals, who can convey the impression that a non-consenting individual is an unsuitable donor for medical reasons, without necessarily explicitly saying so. A doctor's note that says simply that X is not a suitable donor for the organ in question could be written on the grounds that X is not willing to freely consent to donation. Ambiguous notes of this kind, however, would lose their weight if we put in place a market system under which large numbers of people wanted to avail themselves of them. Furthermore, medical professionals might be less willing to provide cover for unwilling donors in a society which does not express its aversion to pressuring donors, by banning organ sales.

Fourth, it is worth noting that my argument is against the *selling* of organs. It does not rule out the possibility that certain kinds of non-cash incentives for organs that do not introduce similar pressures might well be permissible, and might be effective in increasing supply (and correspondingly, in reducing the problems of lack of organs and of familial pressure to donate). The Nuffield Council on Bioethics has recently suggested that people might be incentivised to sign up to the organ donor register by the offer of payment of their funeral expenses, if they later become donors after death. Because there is already public provision for funeral expenses for those in poverty in the UK, such an additional incentive would be unlikely to pressure anyone into donating out of desperation. This incentive also seems unlikely to crowd out altruistic motives to donate, because payment of funeral expenses would generally be seen as a largely symbolic recognition of a priceless gift (as in the case of honouring fallen members of the military), rather than as the price of what has been provided by the donor. In fact, some important recent research on blood procurement supports this idea by indicating that some non-cash incentives have a reduced or absent crowding out effect compared with cash, and could increase overall blood supply.<sup>18 19</sup> Similar innovative ideas that may incentivise live organ donors, while being sensitive both to the dangers of introducing pressure on donors and to the possibility of crowding out effects, should be called for and welcomed.

## CONCLUSION

I have argued that to protect people in poverty from harm, we should disallow the legal option for live donors to sell their organs. But my doing so is not in itself a form of paternalism. In providing a philosophical argument, I seek to influence the democratic decision-making process, not to short-circuit it. People should have the opportunity to decide for themselves

whether my argument is convincing, and whether they might be harmed by a legal organ market, and to vote accordingly.

Whether or not it is accepted that the potential harms to people in poverty outlined in this paper constitute decisive grounds for prohibiting a market in live donor organs, what cannot be denied is that the LC Argument for permitting it rests on a mistake. It is easy to assume, as the LC Argument does, that in order to determine whether a market should be permitted, we need only consider the potential costs and benefits to individuals of particular transactions within the market. Objections to a market then seem rooted in ill-judged paternalism, on our substituting our own judgements about the relative costs and benefits of individual transactions for those of others who would prefer to engage in them if they were permitted to do so. But those making this assumption take too narrow a view, failing to see that while participants in a voluntary market choose for themselves whether or not to buy or sell, they do not thereby choose or approve of the option space within which they make their choices. And they fail to see that people in poverty might well have decisive reasons for preferring *not* to have the legal options that others seek to foist upon them.

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