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DISCUSSION ARTICLE

# Markets and The Needy: Organ Sales or Aid?

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ABSTRACT *As organ shortages have become more accute, support for a market in organs has steadily increased. Whilst many have argued for such a market, it is Gerald Dworkin who most persuasively defends its ethics. As Dworkin points out, there are two possibilities here — a futures market and a current market. I follow Dworkin in focusing on a current market in the sale of organs from living donors, as this is generally considered to be the most difficult to justify. One of the most pressing concerns here is that such a market will exploit the poor. I outline this concern and scrutinise Dworkin's and others' rejection of it. Briefly, I argue that the arguments Dworkin employs for allowing the poor to sell their organs fail, and in fact better support an argument for increasing aid to the needy.*

## 1. Introduction

For well over a decade bio-ethicists have noted that the drastic shortage of organs for transplantation has rendered the procurement of organs a crucial issue [1]. As Emmanuel Thorne notes, the recent "proposal by a prominent organ transplant center . . . to hasten the death of potential organ donors" clearly conveys the desperation of the situation [2]. Moreover, as is widely acknowledged, the problem is not a shortage of potential organ donors but rather actual ones [3]. The challenge facing policy makers in this area is to increase organ donation from potential donors without transgressing moral boundaries. Suggestions have been various and include altering the criteria for death to increase the pool of potential donors; changing donor policy from 'opting in' to 'opting out'; demoting autonomy from its place in bioethics as the principal moral value; xenotransplantation; tissue engineering; and creating a market in organs [4].

My focus in this paper will be on the moral viability of the last option — a market in organs. Support for this option is steadily increasing. As Thorne notes, the ban on such markets has been blamed for shortages of organs and increased waiting lists [5]. Whilst many have argued for a market in organs, it is Gerald Dworkin who most persuasively defends the ethicality of a market in organs [6]. As Dworkin points out, there are two possibilities here — a futures market and a current market [7]. I will follow Dworkin in focusing on a current market in the sale of organs from living donors, as this is generally considered the more difficult to justify. One of the most pressing concerns here is that such a market will exploit the poor. In the following section I outline this concern and scrutinise Dworkin's and others' rejection of it. Briefly, I argue that the arguments Dworkin employs for allowing the poor to sell their organs fail, and in fact better support an argument for increasing aid to the needy.

## 2. The moral viability of a current organ market

As Dworkin acknowledges, the people most likely to sell their organs will be those who are in dire need.

> Those who have alternative sources of income are not likely to choose an option which entails some health risk, some disfigurement, some pain and discomfort. The risks of such sales will certainly fall disproportionately by income class [8].

The concern is that choices made under non-optimal conditions are insufficiently voluntary and exploitative of the poor. According to Dworkin, if this line of reasoning is valid it would have wider implications. For instance, it would imply that poor people should not be allowed to join the army, engage in hazardous occupations, or be paid subjects in medical experiments [9]. Dworkin at this point assumes that most people would be reluctant to deny the poor the opportunity to join the army, to engage in hazardous occupations, or to receive financial remuneration for participation in medical experiments. At this stage Dworkin's argument is based on intuition — an intuition, moreover, which would not necessarily be widely held.

My guess is that most people would look favourably on the poor joining the army *on the proviso* that they were treated on a par with other members of the army and not given dubious assignments. In many societies the army represents a reputable career which provides people with income, status, and other benefits such as health care, food, shelter and education. Our response to Dworkin's second suggestion, namely, engaging in hazardous occupations, would depend on the exact nature of the work. Dworkin's suggestion of high-steel construction, where adequate safety standards were met, would most likely meet with general approval as such an occupation would afford some social standing as well as income. Conversely, many would be less sanguine about hazardous occupations which did not accord social respect or meet satisfactory safety standards. For example, companies who sent the poor, inadequately trained and clothed, into areas with hazardous levels of radioactive material would most likely meet with general disapproval. Finally, with regard to participation in medical experiments, I think, once again, our intuitions are likely to be less straightforward than Dworkin assumes. For instance, we would need to know the precise nature of the experiments before we could pass judgement. Controlled, well-designed experiments which had passed an ethics committee would be acceptable to most people. In contrast, poorly designed experiments which would never pass an ethics committee would most likely meet with disapproval.

These considerations suggest that Dworkin's attempt to undermine the concern that it is exploitative to allow the poor to sell their organs does not succeed as the wider implications he is concerned about do not follow. Risk in and of itself is not the sole concern. Importantly, we are concerned with the wider context of the risk. This includes, amongst other things, what we expect of other groups (in this case the non-poor), associated benefits, and social standing.

Dworkin next tries to put living organ donations into context by citing one study which estimated that the increased risk of death to a 35 year old from giving up one kidney is roughly the same as that associated with driving a car to work 16 miles a day. Dworkin then asks us to

> Imagine saying to a poor person either that her choice to commute such a distance is not voluntary, or if it is, she still ought not to be allowed to commute such a distance, although we will allow middle class persons to do so [10].

What Dworkin is saying is that it would be absurd to disallow poor people to commute, and so, since commuting has the same risks as kidney donation, it would be absurd to disallow poor people to sell their kidneys. However, once again it is not obvious that the cases are straightforwardly analogous. Whilst the actual operation may have the same risk associated with it as commuting, there are other risks which the analogy fails to take into account — most obviously the risk of future vulnerability for members of the community to which the donors belong. As Dworkin himself notes, most well off people would be extremely reluctant to donate their organs unless it were for the benefit of a friend or relative. Organs are not things we readily give up. Hence, organ markets will primarily be supplied by needy people in poor countries — a point Dworkin is also aware of. This is of concern as such countries may begin to be viewed as resources for wealthier nations. Once this happens respect is likely to be diminished, and perhaps the door will be opened for more exploitative practices. Western societies have certainly exploited poorer nations for goods far less significant than body parts.

Dworkin would most likely dismiss this concern. He may argue that we could put in place legislation to prevent people from poorer countries being viewed merely as resources for wealthier nations [11]. However, it is doubtful that such legislation would succeed. What is primarily at issue is an attitude, and attitudes are difficult to legislate against. This is particularly so when they result in certain omissions. The real concern is not that the West will go in and actively plunder organs from people in poorer countries. Rather, the concern is that in seeing poorer countries as resources we will be less motivated to offer alternative avenues of aid. For example, imagine that such a market did exist and that as a result the shortage of organs was rectified [12]. Would wealthier nations really be interested in helping poorer countries attain financial stability and wealth, when doing so would most likely result in a loss of supplies to the organ market?

There is another concern with Dworkin's strategy which should make us wary of accepting a current market in organs. According to Dworkin, "[t]here are certainly objections of justice to the current highly unequal income distribution. But it seems to me paternalistic in the extreme, given that injustice, to deny people choices which they perceive as increasing their well-being" [13]. On the face of it, Dworkin's basic point seems intuitively right — who would deny someone the opportunity to better their situation? But I think this is too simplistic and misses an important point. The reasoning appears to be as follows.

1) The poor experience extreme hardships.
2) We should allow people to engage in activities which would alleviate their hardship.
3) Selling organs would alleviate the poor's hardships. Therefore,
4) We should allow the poor to sell their organs [14].

Whilst initially appealing, this argument is problematic as it justifies a great deal more than allowing the poor to sell their organs. The situation of the poor can be so desperate that even actions which cause extreme harm would constitute an improvement in their situation. We know this is true because there exist communities where

parents seek to alleviate the hardships of their children by mutilating them so that they can beg for food more effectively and hence not starve. We know this is true because women, children and some men prostitute themselves, not for a decent living wage, but so that they and their families can afford a little food. And we know this is true because some families sell their daughters into slavery and prostitution so that they can afford to eat.

Dworkin would most likely respond by pointing to the fact that in most of these cases the harm experienced is not autonomously chosen as the decision to be harmed is made by someone else. As we know from his other writings, personal autonomy is something highly valued by Dworkin — functioning in many cases as a moral constraint on what others can do to us [15]. However, it is not difficult to think of examples where the agent does in fact choose to be harmed in order to alleviate hardships. For example, a woman in straightened circumstances may expose herself to HIV by prostituting herself in order to feed her children or provide them with medicine. Another example would be someone who continued to work in a hazardous industry devoid of safety standards because they needed the income. Furthermore, as most autonomy theorists note, we do make decisions on behalf of our children. Such decisions are generally viewed as justified so long as they serve to better the opportunities of our children. This would rule out the third case — selling a child to benefit other family members — but it would not necessarily rule out the first case.

It is true that some people's lives are so bad that selling their organs would improve their lives and those of their family. But should we encourage such policies when there are other options for help — extensive aid programmes and so on? If a person's life really would be drastically improved by selling a kidney or a section of liver, then it is arguable that they are entitled to help. After all, as many moral theorists have argued, we have an obligation to help protect the needy — or a least not use their vulnerability for our own advantage [16].

In a similar vein to Dworkin, Kennedy and co-authors have recently argued that

> If our ground for concern is that the range of choices is too small, we cannot improve matters by *removing the best option that poverty has left*, and making the range smaller still. To do so is to make subsequent choices, by this criterion, even less autonomous [17].

This passage warrants close scrutiny. The argument rests on the assumption that the best chance the poor have to alleviate their poverty is to sell their organs. But surely there are other options. As I have suggested, increased aid is another option [18]. Furthermore, one has to take into account evidence which suggests that poverty is not significantly alleviated by selling organs. For example, Sanjay Kumar has noted that "[s]o rampant is the trade in Madras that its suburban slum colony Villivakkam — teeming with poor people who have sold one of their kidneys — has come to be known internationally as 'kidney-vakkam' " [19]. It would therefore appear that selling one's organs does not provide sustained relief from poverty. If this is correct, the claim that allowing a current market in organs represents the best option to alleviate poverty is further discredited.

Consequently, I would suggest that Dworkin's, and indeed Kennedy and co-authors', arguments more naturally support the conclusion that we should help the desperately needy (perhaps through aid), not the conclusion that a current market in

organs should be developed. The intuitive appeal of Dworkin's argument is that we feel it would be a good thing if the situation of the poor were rectified. However, this does not support a current market in organs.

Finally, a recent study by Burroughs et al. found that people who didn't feel that they should be paid for their organs were more likely to donate [20]. It is possible that those disinclined to donate would be prepared to sell their organs. Yet it is also possible that many people who are currently prepared to donate their organs, or those of deceased family members, would be disinclines to either sell or donate them if a market for organs was in existence. If this were the case we would be more reliant on organs from poorer nations, which would be strategically as well as ethically less than ideal. The point is that we cannot assume that a market in organs would increase availability — it may be counterproductive to the attempt to turn potential donors into actual ones. The issue requires further investigation [21].

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## NOTES

[1] See for example, Kenneth Einar Himma, A critique of &UNOS liver allocation policy, *Cambridge Quarterly of Healthcare Ethics*, 8, 1999; Jean-Christophe Merle, A Kantian argument for a duty to donate one's own organs: a reply to Nicole Gerrand, *Journal of Applied Philosophy* 17, 1, 2000; Aaron Spital, the shortage of organs: for transplantation: where do we go from here?, *The New England Journal of Medicine* 325, 17, 1991; Robert Veatch, routine inquiry about organ donation — an alternative to presumed consent, *The New England Journal of Medicine* 325, 1991.

[2] Emmanuel Thorne, The shortage in market-inalienable human organs: a consideration of 'nonmarket' failures, *The American Journal of Economics and Sociology* 57, 3, 1998, p. 247.

[3] For example, K. Bart, E. Macon, F. Whittier, R. Baldwin, J. Blount, Cadaveric kidneys for transplantation: a paradox of shortage in the face of plenty, *Transplantation* 31, 1981.

[4] These suggestions have been advocated by various writers, but see for example A. Spital, The shortage of organs for transplantation, *The New England Journal of Medicine* 325, 17, 1991; D. Thomasma, Ethical issues and transplantation technology, *Cambridge Quarterly of Healthcare Ethics* 4, 1992; J. Portmann, Cutting bodies to harvest organs, *Cambridge Quarterly of Healthcare Ethics* 8, 1999; G. Dworkin, Markets and morals: The case for organ sales, *The Mount Sinai Journal of Medicine* 60, 1, 1993.

[5] Thorne, The shortage in market-inalienable human organs, p. 247.

[6] Dworkin, Markets and morals. See also A. Barnett & D. Kaserman, The shortage of organs for transplantation: exploring the alternatives, *Issues in Law and Medicine* 9, 2, 1994.

[7] A futures market involves individuals selling the rights to their organs after their death. In a current market, individuals sell their organs whilst alive.

[8] Dworkin, Markets and morals, p. 67.

[9] Dworkin, Markets and morals, p. 67.

[10] Dworkin, Markets and morals, p. 67.

[11] Perhaps along similar lines to the legislative solution advocated by Dworkin in response to possible unjust distributional consequences of a market. See Markets and morals, p. 67.

[12] Many have argued this. See for example A. Barnett & D. Kaserman, Comment on "The shortage in market-inalienable human organs": faulty analysis of a failed policy, *The American Journal of Economics and Sociology*, 59, 2, 2000; D. Kaserman & A. Barnett, Organ transplants: free market can solve shortage, *The Atlanta Constitution* Sep 10, 1991.

[13] Dworkin, Markets and morals, p. 67.

[14] The argument 1–4 in fact differs from that given by Dworkin. Dworkin's argument is couched in terms of choices *perceived* to increase well-being. Argument 1–4 is stated in terms of choices which *actually* alleviate hardships. However, this alteration strengthens Dworkin's argument. It is more difficult to

argue against the right of people to engage in risky behaviour which will actually increase their well being, than its is to deny them choices which they merely perceive as bettering their situation. This is especially so if we have good reason to believe them to be mistaken.

[15] See for example G. Dworkin, *The Theory and Practice of Autonomy* (Cambridge, Cambridge University Press, 1988).

[16] See G. Brock, *Necessary Goods: Our Responsibilities to Meet Others' Needs* (Lanham: Rowmann and Littlefield, 1998) for a useful collection of papers defending the legitimacy of positive rights claims and our duty to help the needy. See also R. Goodin, *Protecting the Vulnerable* (Chicago, The University of Chicago Press, 1985).

[17] I. Kennedy, R. Sells, A. Daar, R. Guttman, R. Hoffenberg, M. Lock, and J. Radcliffe Richards, The case for allowing kidney sales, *The Lancet*, 351, 9120, 1998.

[18] Moral weight is added to this option when one adds into the calculation that, arguably, many poor people are as badly off as they are because of western interference. Policies pursued by western societies have contributed to the poverty and hardship experienced by people in the third world. On this point see C. Card, Caring and evil, *Hypatia* 5, 1990.

[19] S. Kumar, Curbing trade in human organs in India, *The Lancet* 344, 8914, 1994.

[20] T. Burroughs, B. Hong, D. Kappel, F. Dean & B. Freedman, The stability of family decisions to consent or refuse organ donation: would you do it again?, *Psychosomatic Medicine* 60, 2, 1998.

[21] I am greatly indebted to Ian Ravenscroft for many helpful discussions. Thanks are also due to Suzanne Uniacke, and to Karen Reynolds who invited me to speak at the School of Informatics and Engineering at Flinders University on the ethical issues surrounding organ donation.