

Kidney Markets: Irreconcilable Aims of Medicine and Organ Markets

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Medicine aims to save lives. For those who have renal failure, the life-saving procedure entails a kidney transplant. Given the shortage of kidneys to meet patient demand, medical practitioners, ethicists, and economists have considered enacting a kidney market to incentivize people to sell kidneys to those in need. A person needs only one of his two kidneys to live, so if many able-bodied people sold their second kidneys, millions of patients with renal failure could be granted a second chance.

Physicians could inevitably save more lives with a kidney market in place, but in doing so, they would undermine the other central goals of medicine: to preserve the dignity of the human being and the body. Because sellers and buyers would function in a “noxious market” in which the two parties are not equal, kidney markets do not preserve the dignity of the person. Because kidneys would be marketed like any other commodity, regardless of whether the ultimate end of the transaction would align with the end of medicine, kidney markets would undermine the dignity of the body. These consequences show that kidney markets would disregard medicine’s goals to care for the person and the body. While physicians should uphold their duty to save lives, they should do so in a dignified manner, neither denigrating the patient nor the body.

Examining all sides of the ethical debate on kidney markets has made clear two reasons why I wish to continue studying medical ethics. First, I aim to become a forward-looking, responsible physician. As a medical school student in the coming year, I will have the opportunity to perform novel stem cell research, discuss end-of-life care options, and learn the criteria to help patients decide whether they should elect genetic testing. Innovations in medical science will continue to expand treatment options for patients. There is no end to what medicine *could* do. The question that rests on my mind, however, concerns what medicine *should* do.

These novel treatment options should be examined on moral grounds, to test if they uphold the core principles of medicine. As a physician, I will examine both the practical benefit and ethical standing of new research and technologies.

The second reason that I continue to be enthralled by medical ethics comes from the field's importance. Conversations on the topic of ethics alone excite me. Paired with medicine, ethical discussions can have profound ramifications on public policy, on the culture of medicine, on patient treatment—on life. Medical ethics guides practitioners on whether a patient can elect to have an abortion, a loved one can act as a surrogate decision-maker near a patient's end of life, or hospitals can turn away patients without insurance. To me, there is nothing of greater value worth studying than the ethical debates which surround life and death.

This essay will examine whether a kidney market is ethical. While we will consider important practical concerns, such as how the law should uphold moral standards related to kidney markets, we must first examine the moral grounds upon which kidney markets are founded before delving into the practical side.

### Preserving the Dignity of the Seller and the Buyer

To consider the morality of any market, we should understand the meaning of a “noxious market.” Philosopher Debra Satz defines a noxious market as one which undermines the ability of parties in the exchange to be treated as equals.<sup>1</sup> Two scenarios outline the parameters of a noxious market. In the first, Satz posits that parties with a weak or asymmetric agency would inevitably allow the market to produce harmful outcomes for the individual. In this case, one party does not have full knowledge or grasp of the situation to make an informed decision. For

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<sup>1</sup> Satz, D. (2010). Why Some Things Should Not Be for Sale: The Moral Limits of Markets—Noxious Markets. *Oxford Scholarship*, 3-4. DOI:10.1093/acprof:oso/9780195311594.003.0004

example, an ad that targets children would be a noxious market because children do not have the capacity to make an informed decision. In the second scenario, Satz claims that a transaction between parties with underlying vulnerabilities could lead to harmful outcomes for society. Child labor markets, for example, “operate to undermine the capacities that a [child] needs to claim her rights or to participate in society.”<sup>2</sup> The child, who represents the weaker party, is exploited by adults, the more dominant party. For people to make claims on others in a market, they must be treated as equals.

A kidney market is noxious by virtue of the second scenario, which ultimately undermines one aim of medicine: to preserve the dignity of the human being. Medicine can only uphold the dignity of the person if both parties recognize that the other is equal. A doctor-patient relationship, for example, recognizes that both the patient and the doctor have rights to the patient’s health. A kidney market, however, does not treat the two transacting parties as equals. According to Satz, the seller or buyer inevitably would be in a “paradigmatic *desperate exchange*, an exchange no one would ever make unless faced with no reasonable alternative.”<sup>3</sup> The nature of the exchange, selling your kidney at a high life-saving price, is paradigmatically desperate on the part of the seller, buyer, or both. The vulnerable party necessarily loses his ability to make a free and autonomous decision, thus violating his dignity as a person.

In a kidney sale, we often think of the seller as the vulnerable party. As evidenced by the current black market in kidneys, the poor commonly sell to the rich. The poor seller could be destitute, need to provide for his family, or desire to better his children’s futures. Whatever the circumstance, he is motivated by external factors to give up part of his body in exchange for

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<sup>2</sup> Ibid, 5.

<sup>3</sup> Satz, D. (2010). Why Some Things Should Not Be for Sale: The Moral Limits of Markets—Ethical Issues in the Supply and Demand of Human Kidneys. *Oxford Scholarship*, 6. DOI:10.1093/acprof:oso/9780195311594.003.0009

money. He is also coerced in the sense that the transaction is not “carried out under fair background conditions,” and thus, the buyer could take advantage of the seller’s vulnerability.<sup>4</sup> If the seller had other options to make money or ensure his family’s future, he would consider those options with equal weight. But if no such alternatives exist, he must necessarily sell his kidney. Therefore, the sale of a kidney illustrates “the injustice that can arise when people buy and sell things under conditions of severe inequality or dire economic necessity.”<sup>5</sup> Driven by their need to have basic necessities, the poor sellers are not equal in the kidney sale.

However, if we examine the exchange from the relatively wealthy buyer’s point of view, we learn that the rich could conceivably be a vulnerable party as well. The buyer’s desperation is a function of how close he is to death and how much he values his life. The rich buyer could also have a family that depends on his life and his financial support. In the desperate battle between death and his family’s well-being, he perhaps sees no other option than to pay a grand lump sum upfront for a kidney to save his family’s financial future. The wealthy buyers, coerced by such external concerns, also would not be equal in the kidney sale.

The unequal power dynamic in both examples illustrates why kidney markets would challenge the understanding that medicine should preserve the dignity of the human being. Both sellers and buyers function in the medical world, in which no harm shall be done. As such, they have the right to be protected from a noxious kidney market where one party profits from the other’s vulnerability. A research study of India’s kidney market illustrates the consequences of a noxious market. Seventy-nine percent of Indian kidney sellers interviewed “regretted their decision and would not recommend that others sell a kidney.”<sup>6</sup> The majority of them were

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<sup>4</sup> Sandel, M. (1998, May 11-12). What Money Can’t Buy: The Moral Limits of Markets. *The Tanner Lectures on Human Values*, 94-95. Lecture conducted at Brasenose College, Oxford.

<sup>5</sup> Ibid, 94.

<sup>6</sup> Satz, Ethical Issues in the Supply and Demand of Human Kidneys, 7.

married women, leading researchers to believe that the women's weak agency compared to their husbands, led them to sell a kidney. The findings demonstrate the extremely deleterious consequences that can arise when a vulnerable party takes action.

In a noxious market, the desperate party does not make a free choice in the transaction. Philosophers may push back and claim that *no* choice is truly free, unaffected by a person's circumstances. We take actions that are inevitably influenced by our social sphere, environment, and situation. While the concern is valid, economists have set a different standard to define a free choice. Namely, if the acting party has plenty of options at hand, we deem the decision to be free. If he is constrained in his options, we deem the decision to be unfree. A kidney market blatantly does not allow for a free choice. The seller has very few options outside of selling a kidney to make \$100,000 in one transaction. The buyer has no practical alternatives to sustain his life other than procuring a kidney. As such, both parties are extremely limited in their choices. Being enslaved into the sale of a kidney shows that the two parties are not equal in the precarious kidney sale, a transaction thus disregarding the dignity of the human being.

### Preserving the Dignity of the Body

According to principles outlined for preserving the dignity of the human being, we should prohibit the sale of kidneys—but what about a donation? The market exchange is unequal because the person who gives away the kidney is influenced by external factors and coerced into a decision. While clearly evident in a market transaction, influence of this nature also occurs at a more subtle level when donating. For example, if you have a loved one who has renal failure, and you are found to be a match, you will feel compelled to donate your kidney. A donor should do it out of goodwill and compassion, but that does not prohibit guilt and obligation from

influencing the decision. Both the selling and the donating of kidneys can be equally affected by outstanding circumstances.<sup>7</sup>

To understand the difference between selling and donating, we must consider the function of a market. In a normal market, the seller and the buyer are allowed to exchange goods to a great extent without caring about the means and ends of the deal. You could sell your car for \$5,000, then use that money to buy courtside season tickets to the Lakers or a Rolex watch. In this exchange, you sell your car as the *means* to get money, then use the money toward different *ends*, whether that is to enjoy a sports event or impress your coworkers with your fancy accessory. You can engage in this transaction in a free market economy, which makes no moral judgments about how you spend the money that you receive.

In the normative scope of medicine, however, the means and ends of a decision should coincide with meeting a central goal of medicine: to preserve and restore health. Only in using the body, namely the kidney, toward this ultimate goal will we ensure that we are using the body in a dignified manner. Hence, donating a kidney is justified in medicine. Relinquishing a part of the body to help restore another person's health entails that both the means and the end match, while preserving the dignity of the body.

However, the marketization of the kidney is problematic insofar as the commodity would be treated like *everything else* on the market, thereby disregarding the dignity of the body. If medicine was merely a free market created for the benefit of the consumer, rather than for the patient's care, a number of consequences could arise. Imagine a world in which physicians pursued medicine for its lucrative paygrade. At many hospitals today, physicians make a bonus for every new patient visit. Rather than caring for and attending to long-term patients, they

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<sup>7</sup> Radcliffe Richards, J. (1996). Nephraious Goings On: Kidney Sales and Moral Arguments. *Journal of Medicine and Physiology*, 21, 380.

would focus on seeing a greater number of new patients in order to raise their paycheck. In another scenario, patients become consumers who can buy anything in the market with enough money. Those with opioid addictions and depressive disorders could easily buy the drugs needed to exacerbate their medical problems. For the kidney market, the wealthy consumer could buy a kidney, store it in a jar, and turn it into a prized paperweight for his books. None of these proposed ends coincides with the function of medicine.

The difference between selling and donating lies in the agent's ability to match means and ends. In the realm of medicine, the means and the ends must match and uphold medicine's goal to preserve health. A kidney market would inevitably fail to meet this requirement because the seller can use the means to serve a non-medical end, thus violating the dignity of the body. We return to the common example where the poor person sells his kidney for a grand sum of \$100,000, the means, then use the money toward supporting his family and putting his children to school, the ends. The seller's end demonstrates that he did not *aim* to restore health for another. Those who donate kidneys, however, do so with the intent of saving another person's life.

Because transactions in medicine are justified if they serve the goal of preserving health, we can examine a case in which the "selling" of a kidney is permissible. In a real-life scenario, a father wanted to sell his kidney in order to receive enough money to pay for his daughter's medical treatment.<sup>8</sup> If we believe that there should be no market in kidneys, then we should prohibit this father from selling his kidney. But the terms "selling" and "donating" are simply vernacular that should not be used to draw hard and fast rules for what should and should not be allowed. In this case, the father's action aligns closely with a donation. He sells his kidney and

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<sup>8</sup> Ibid, 376-377.

sacrifices his health, the means, to save his daughter's health, the end. The exchange of health for health is permissible. The means and the end coincide and mirror what would happen during a donation. Ultimately, the father does not treat the kidney like anything else on the market; he preserves the dignity of the body.

To address the continued concern that a donation, as with a sale, is not truly free, we must accept that no decision is truly detached from external factors. Attempts made to tease apart the person from his world are useless. Instead, we can concentrate our efforts to understand the ends and thus motivations behind our actions. In this vein, a person who sells or buys an item on the market necessarily expects something of similar value in return. A person who donates an item to another must do so out of good faith. The end of donating a kidney is, at best, saving the life of a loved one. But because the person who donates receives nothing in return that can be used toward other purposes, he can have no other end paired with the means.

The marketization of the kidney, as if it were comparable to other commodities, undermines a central tenet of medicine: to preserve the dignity of the body. Opposition to the kidney market derives not from the intrinsic value which the kidney may have. After all, a painting may have objective aesthetic value, but can still be exchanged in a free market with few moral qualms. Rather, the normative setting of medicine demands that nothing of incomparable value should be marketed unless it aims to further health. A kidney market would fail to do so, qualifying it as immoral and violating the dignity of the body.

### Kidney Markets: Moral Standard or Law?

The question of whether kidney markets are moral differs from the question of whether they should be illegal. The law sets the minimum moral standard for its citizens, below which

their welfare would be at risk. While I argue that kidney markets are immoral, my argument rests partly on the normative setting of medicine, which lies outside the scope of the law. The law should enforce that the dignity of human beings be preserved, but not necessarily that the dignity of the body be preserved for the sake of health.

A leading organization within the normative scope of medicine, such as the American Medical Association (AMA), should establish rules and guidelines about kidney markets. A ban on kidney markets would fall in line with their Code of Ethics concerning organ transplantation which states, “efforts to increase donation must protect the interests of living and deceased donors.”<sup>9</sup> Preserving the dignity of the patient and the body protects kidney donors from harm.

The AMA could set moral guidelines and recommendations on kidney markets but could not enforce its standards by law. If parties participate in a kidney sale, the AMA could impose a limited number of consequences, such as revoking a physician’s license if he aided in the transaction.<sup>10</sup> The function and nature of the organization restrict its influence on the realm of medicine. The organization does not have the jurisdiction to assert that a kidney sale is illegal or to put the seller or buyer in jail for partaking in the transaction. While limited in its power, the AMA does set the ethical guidelines which most physicians abide by today. Its ability to establish the norms of medicine cannot be overlooked—the AMA could be a leading authority on the ban of kidney markets.

## Conclusion

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<sup>9</sup> American Medical Association. *Code of Medical Ethics overview*. <https://www.ama-assn.org/delivering-care/ethics/code-medical-ethics-overview>

<sup>10</sup> Alper, T. (2014, May 1). Doctors Can and Do Participate in Executions. *New York Times*. <https://www.nytimes.com/roomfordebate/2014/04/30/doctors-in-the-death-chamber/doctors-can-and-do-participate-in-executions>

A kidney market would inevitably violate two central aims of medicine: to preserve the dignity of the human being and the body. As such, a kidney market would be immoral. The exchange takes place in a noxious market, which means that the two parties are not equal, undermining the dignity of the person. Meanwhile, the body would also be degraded into a commodity like any other, which would lead us astray from the ultimate end of medicine, namely health. If medicine is to uphold that physicians should care for patients without harming them or others, then a kidney market is not permissible.

While we may be tempted to legislate a kidney market on the grounds that more lives could be saved, we should also consider the harm done to the integrity of medicine. All decisions made within the normative scope of medicine must adhere to medicine's goals. Only when we abide by these moral standards will we be able to find proper solutions to medical problems.

### Personal Reflection: Why Kidney Markets Matter

Kidney markets present a case study in which the proposed solution would offer benefits to many and harm to others. Through much research and reflection, I have learned that this serves as the basis for many cases in medical ethics. The central question in these ethical scenarios remains, would the central goals of medicine be upheld? More specifically, would the dignity of the human being and of the body be preserved?

As I prepare for a career in medicine, undoubtedly filled with ethical quandaries and hard decisions, I will return to these questions often. Medicine, as a profession, requires its practitioners to have the most comprehensive mind, the greatest amount of knowledge, and the best judgment. Paradoxically, there is no established authority which physicians can turn to in uncertain patient cases. That is why I aim to be a physician equipped with not only the medical

knowledge and skills to care for my patients, but also the foresight and moral foundation to guide my patients to make ethical decisions despite overwhelming circumstances. I am grateful for the opportunity to have learned the foundational principles of medical ethics and examined case studies as an undergraduate student. In medical school and beyond, I hope to develop my ethical framework and become a physician who can help patients and colleagues navigate the nuanced world of medical ethics.