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Exploitation, Coercion, and Other Problems with Kidney Donation

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Abstract

Kidney failure is a major killer. Many lives could be saved through organ donation if people were less reluctant to part with their spare kidney. Should we incentive donation by paying people to do it?

Many thousands of people suffer from kidney failure. Some die quickly. Some languish on dialysis and die slowly. This is an avoidable tragedy. By a miracle of evolution, most people have two functioning kidneys, though they'd be fine with only one. By a miracle of medicine, doctors can safely remove a useless kidney and instal it where it's needed. There is a problem. People are reluctant to part with their spare. While many will give a pint of blood for a sticker, a kidney is something else. Nephrectomy is safe but it's neither risk free nor comfortable. And it involves knives, not needles. So, few agree to share and the tragedy continues.

There is a solution. We can encourage people to share by making the option more attractive. Unfortunately, the costs of nephrectomy are non-negotiable. We can't eliminate the risk of surgery or make it comfortable, and doctors have to use knives. The benefits of nephrectomy are, at present, also non-negotiable. By law, donors are permitted no compensation. But the law could change. Consider a lifesaving proposal. The government, instead of paying for dialysis, pays healthy volunteers for their healthy kidneys. The price would be fixed and significant. People would still be cut open, but they'd receive $100,000 for their trouble. These benefits, set against the costs, make for an attractive package. What was once a burden would be made worthy of pursuit. Countless lives would be improved and extended.

The lifesaving proposal is widely regarded as grossly immoral. Much opposition stems from concern for those who would volunteer. We are told that sellers would be financially desperate. Desperation begets vulnerability. And the vulnerable are easily abused. There is an irrepressible logic at work here. Those lacking resources to meet basic needs have little choice but to accept whatever terms are offered. Bargaining is a luxury for those who can afford to decline and the desperate cannot afford to decline. Occupying this sorry state, they are tempting targets. Unscrupulous operators see opportunity in their weakness and seize it. The sad outcome is predictable: the vulnerable are made victims.

This concern motivates three objections to the lifesaving proposal. The first holds that prospective sellers would be taken advantage of unfairly. They would be fodder for exploitation. The second invokes coercion. Rather than

volunteers, those who would sell would be conscripts compelled by threats. The third claims that sellers could not validly consent. They might verbally express consent, but it wouldn't be morally transformative. Each of these objections to the lifesaving proposal takes seriously the danger inherent in vulnerability. All are predicated on legitimate moral concerns, and none will be dismissed as trivial.

Perhaps, though, if we think it's wrong to extract body parts from the vulnerable, we should rethink the practice of unpaid kidney donation as well. For the very concerns animating resistance to the lifesaving proposal counsel against the status quo with greater force. Consider the conditions from which donors agree to share. Some are Good Samaritans giving gifts to strangers. They seek out someone in need and agree to provide. They require no protection. They are also exceptional. Most donors contemplate the option only when a family member is facing death. They do not look for an opportunity to save a life. That opportunity is foisted upon them. So positioned, these donors are desperate, not for money, but to save the life of a loved one. Desperation begets vulnerability. And the vulnerable are easily abused. Here too there is an irrepressible logic at work. The problem is not that donors lack choice. The problem is that the choice they have – to give the gift of life or withhold it – is so momentous. It affords them a kind of power. But that power makes them vulnerable to the influence of others. And that influence can quickly devolve into abuse. The conclusion is ineluctable: kidney donors, like those who would sell, may also be victimized.

The conclusion may seem incredible. That's understandable. The possibility that donors are mistreated is obscured by powerful narratives of courage and kindness. We are told that donors are heroes. And heroes are invincible. They are, at least, invulnerable. They are not taken advantage of; they take advantage. No one abuses Superman. The narrative is not exactly false. Donors *are* heroes. But they aren't invincible. So much hero talk conceals their very real

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distress. Desperate to save a life, they may agree to bear any cost. Admiring their selflessness we dwell on their generosity and forget its toll. All of their doubt, reluctance, and fear – the unlovely aspects of donation – are reimagined in a fashion fitting the narrative. The story is more romantic but less accurate, approaching fiction. And it's not innocuous. Believing the narrative, we misunderstand the situation. We gratefully accept gifts from heroes while refusing to cut open desperate people. But the difference is merely verbal. These heroes are desperate people.

'Consider a lifesaving proposal. The government, instead of paying for dialysis, pays healthy volunteers for their healthy kidneys.'

Disabused of the illusion, we might see kidney donation differently. Recognizing the danger inherent in vulnerability, we might rethink the arrangement. Recall the first objection to the lifesaving proposal, which claims that sellers would be exploited. Exploitation, as deployed here, is *unfair advantage taking*. Mere advantage taking is morally unproblematic. I take advantage of the neighbourhood lemonade stand when I exchange 50¢ for refreshment. I judge the drink to be more valuable than the money I pay for it. Advantage taking becomes exploitative when unfair. A hiker lost in the desert, dehydrated and on the brink of death, is in no position to bargain. She would give 50¢ for refreshment. She would also give her every possession if that were the price. Knowing this, the neighbourhood kids might offer her that trade. Such an exchange, even if consensual and mutually beneficial, is troubling. The youthful entrepreneurs leveraged her desperation in return for outsized profit. This advantage taking, because unfair, is exploitative.

It takes little effort to imagine how kidney sales could be exploitative. Like dehydrated hikers, prospective sellers would be desperate. Because desperate, they would be vulnerable. With so few options, and so little leverage, they may see advantage in any trade at all. The resulting exchange strikes many as inequitable. One party opens their wallet and offers something fungible and impersonal. The other opens their abdomen and surrenders a piece of themselves. Sellers, were it not for their abject condition, would never entertain the exchange. The disparity in value between what they give and what they gain is too much. No matter, this won't stop buyers who see opportunity in sellers with so few options. The exchange, since unfair, is exploitative.

If we find this objection persuasive – if we think the lifesaving proposal involves exploitation – we should be troubled by kidney donation. Without losing sight of their generosity, remember what inspires it. The vast majority of donors act only when a family member suffers kidney failure. They are, in some respects, not unlike those paying ransom for the safe return of hostages. Both are compelled by lethal incentives and neither is in a position to bargain. Donors, were it not for the impending death of a loved one, would never entertain the exchange. We take advantage when we ask them to be cut open. And we treat them unfairly when, knowing they can't decline, we offer them no compensation in return. Not even sellers are so desperate. No one gives a kidney for 50¢. But donors, whose vulnerability is absolute, do it for less. They are exploited. At least, that's what we should believe if, were they offered $100,000 for the same effort, we'd still think they were exploited.

Next, consider the second objection to the lifesaving proposal, which claims that sellers would be coerced. The notion of coercion is here understood capaciously. It involves the use of more or less overt threats, to compel another to pursue the coercer's preferred course of action. This is morally problematic for two reasons. First, coercion is an affront to autonomy. It disrespects persons by manipulating them for the promotion of another's ends. Second, coercion imposes welfare costs. Some of these costs result from the threat itself, which can exact

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psychological harm. Other costs follow. If the target doesn't comply with the coercer's demands, she's likely to be harmed when the threatened force is actualized. If she does comply, she's likely to be harmed in the process. Otherwise, the coercer would not have needed to resort to threats.

The possibility that sellers would be coerced is immediately troubling. There are two ways of developing the objection. Sometimes it is claimed that sellers would be coerced by their impoverished *circumstances*. So financially desperate, they would, in effect, be forced to sell by the threat of starvation, homelessness, or worse. The integrity of their choice is thereby compromised. Alternatively, sometimes it is claimed that kidney sellers would be coerced by other *agents*. In giving people the option to sell, we give them the opportunity to secure significant sums of money. Felonious others, seeking quick profit, may pressure prospects to sell by means of more or less explicit threats. Once the sale is complete, the proceeds may be forcibly extracted.

If we find this objection persuasive – if we think the lifesaving proposal involves coercion – we should be alarmed by kidney donation. Begin with the suggestion that sellers would be coerced by their circumstances. An initial point to make is this: if one's circumstances could coerce, then donors, facing the death of a loved one, must be utterly coerced. (Really, we should reject the notion of coercion by circumstance. It would imply, for example, that cancer patients needing chemotherapy are coerced into treatment. That's absurd. Notice also, if we must allow that circumstances can coerce, the remedy would seem to be more options, not fewer. We don't help cancer patients by prohibiting chemotherapy.)

What about the possibility of coercion by other agents? Having access to $100,000 might make one vulnerable to the influence of others. After all, many people value money, and $100,000 is a lot of money. Perhaps. But notice, those in need of money might try to coerce anyone who has some. Or, they might engage in mutually beneficial exchange. They might sell their labour or possessions or seek a loan. They have options. Compare what potential donors have access to. Their spare kidney, even if worthless to most people, is extremely important to a few. It can keep someone alive. And it might be the only thing that can serve that purpose. This – possession of what's necessary to another and available nowhere else – is what makes one vulnerable to coercion. Those needing a kidney have few options. There may be only one viable donor. Suppose that person refuses. With nowhere else to go, the needy must redouble their efforts. They must ask again more forcefully. And since it is illegal to offer payment, they can't secure cooperation by making the option to donate more attractive. They can, however, induce compliance by making refusal to donate intolerable. They can harass and pressure the donor. They can threaten to withdraw affection. They can cultivate guilt. And if they promise all of this unpleasantness will stop if only the donor complies, the donor might comply. In short, if we believe sellers are vulnerable to coercion, we should believe the same, or worse, is true of donors.

We arrive at the third objection to the lifesaving proposal, which, recall, holds that sellers would be unable to validly consent to the exchange. The importance of consent is not easily overstated. With it, one may permissibly perform acts that would otherwise be wrong. It is in this way morally transformative. To serve this purpose, consent requires more than an exchange of words. It must be given *voluntarily* by one who is *competent* and *informed*. All three conditions must be satisfied for consent to be valid.

The possibility that sellers, because desperate, would be unable to give morally transformative consent is unsettling. Few dispute the information condition. The nephrectomy is the same whether paid or not, and the uninformed can become informed. The other two conditions are more often challenged. Sometimes the objection focuses on the element of voluntariness. It is suggested that the promised payment would constitute an *irrefusable offer*. Those in poverty, desperate to fill the yawning gap between what they need and what they have, could not possibly decline. There are limits to what can be resisted. Offers exceeding those limits preclude voluntary choice. Alternatively, sometimes the objection focuses on the element of competence. On this

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construal, the promised payment would constitute an *undue inducement*. The money offered, so dazzling, would subvert rational risk assessment. Prospective sellers, acting like children, could not judge the proposition for themselves. The objection, on either interpretation, is serious. If it is well founded, the desperate few who would be willing to sell would be unable to sell. Their tokens of consent would be always defective and never transformative.

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If we find this objection persuasive – if we think sellers won't be able to give valid consent – we should be worried about kidney donors. Under the status quo, we regularly permit people in crisis to undergo nephrectomy. Facing the premature death of a loved one, and wanting badly to prevent it, they ask to be cut open. We give them what they ask for. Their desperation is more medical than financial, but it's no less potent and probably more so. Insofar as desperation compromises consent, the problem is acute in donation. If any offer is irrefusable, it must be an offer to save a life. What could be harder to decline? If any inducement is undue, it must be that which is dangled before those anticipating the death of a loved one. In what other context do people so readily disregard their own welfare? The conclusion to draw is now familiar. If sellers, because financially desperate, can't validly consent to their operation, then donors, because medically desperate, can't either.

Viewed from here, the narrative surrounding kidney donation requires revision. The protagonist is still a hero bearing lifesaving gifts. But this hero is also exposed to the danger inherent in vulnerability. So depicted, donors, like sellers, may be made victims. Because desperate, and in no position to bargain, they may accept unfair terms. They may be exploited. Since they have something others badly need and can get nowhere else, they may be pressured to supply it. They may be coerced. And what they contemplate is momentous. If morally transformative consent is unavailable to sellers, so too is it unavailable to donors.

Perhaps this reasoning will be challenged. It seeks to extend worries salient in market contexts to the context of donation. The cogency of this extension depends on the strength of the analogy. It will be granted that donors and sellers are in certain respects similar. Both, of course, undergo the same procedure. But we might insist on differences. We've overlooked the matter of motivation. Whereas market participants pursue money for their own ends, donors are altruists acting out of concern for the well-being of another. Many regard this difference as significant. Indeed, altruism is not infrequently described as the foundational value of transplant ethics. This difference in motivation weakens the analogy. We should worry about vulnerability in the market where persons look out only for themselves and egoism reigns. But that concern is misplaced in the domain of donation where the operative motive is altruism.

This challenge is doubly unpersuasive. First, it rests on a conceptual confusion. It seeks to distinguish between donors and sellers on the basis of their motives. The former, we are told, are altruists and the latter are egoists. This conflates

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the *acts* of giving and selling, with the *motives* of altruism and egoism. Consider this. One can sell with an altruistic motive. Suppose the proceeds are used to finance medical treatment for a family member. And one can donate for self-interested reasons. Suppose a wealthy relative will leave the donor with a generous inheritance. The second problem with the challenge is more significant. It's predicated on the false supposition that an altruistic motive somehow affords protection. It does not. Altruists may also be abused. People paying ransom to hostage takers act altruistically. But no one believes that their motive affords protection. If anything we should think that altruists, given their concern for others, are more vulnerable to manipulation, not less. Thus, the analogy between donors and sellers is not weakened by reference to motives.

If the foregoing is correct, and donors are in much the same position as sellers, how should we proceed? One option has us end donation. That would be a moral mistake. Many thousands of people suffer from kidney failure and transplantation is far and away the best treatment. With the potential to improve and extend so many lives, we should not abandon what might instead be fixed. A second option has us defend donation. Friends of the status quo might respond to the aforementioned concerns by pointing to existing safeguards and proposing new ones. There is, I must admit, much to recommend this response. With some ingenuity, we might devise a way to safely procure kidneys from the vulnerable. Then again, if this sounds plausible, perhaps we were too quick to dismiss the lifesaving proposal.

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