DePauw University

Scholarly and Creative Work from DePauw University

Student Research | Student Work

1-2021

An Ethical Market for Kidney?

Sang T. Truong

DePauw University, sangtruong_2021@depauw.edu

An Ethical Market for Kidney?

Sang T. Truong
DePauw University
sangtruong_2021@depauw.edu

The kidney performs several vital functions that maintain our general health condition, including filtering waste chemicals out of our blood. Kidney failure is a condition where patients' kidneys lose their ability to filter the waste from their blood, leading to accumulating toxins in their body. Without any medical care, a patient with kidney failure has a couple of days to a couple of weeks to live. One way to elongate the life of the kidney-failure patient is through a kidney transplant, where another kidney is implanted into the patient's body.

In the U.S, it is illegal to trade a kidney for money. Therefore, the supply of kidney come from volunteers, which could be living or deceased donors. According to the U.S National Kidney Foundation, the kidney supply can only meet 10% of the demand. From an economic point of view, this current kidney supply system in the U.S is not efficient since it could not meet the large demand from patients. In 2014, 4,761 patients died while waiting for a kidney transplant. In the same year, there were 3,668 people who became too sick to receive a kidney transplant. On average, there are over 3,000 new patients on the waiting list each month (National Kidney Foundation, 2018). These statistics are the pressure for the scholarly community to figure out a solution for kidney failure patients.

Market has a big reputation for its famous function: allocating scarce resources. Facing with the shortage of kidney, a market mechanism is proposed to allocate the kidney, a scarce resource, from donor to acceptor. For instance, Danny Frederick suggests that a competitive market mechanism in human organs will improve the current kidney shortage situation. Frederick argues that the right to sell the extra kidney of an individual is part of his rights and liberties: if that person fulfills his duty not to harm any other people, he has the right to do what he pleases. Based on the framework of libertarianism, Frederick argues that because kidney trading generates good consequences (save the life of buyer and leverage the financial situation of supplier), there is no reason to restrict the right of a normal adult person to sell his kidney for money (Frederick, 2010).

On the other hand, many critics worry that establishing a kidney market will damage the liberties of humans. Debra Satz worries that establishing a legal system for trading kidneys will enable exploitation of the desperation of the poor (i), will lead to slavery (ii), and will generate negative externalities on the society (iii) (Satz, 2010). Samuel Kerstein worries that a legal system to trade kidney will be disrespectful to humanity because kidney extracting treat human as a mere mean (iv) (Kerstein, 2009). Even with the positive motivation of saving kidney-failure patients, Satz and Kerstain are hesitant about the kidney market because of its potential negative consequences.

In addition to the debate between Satz, Kerstain, and Frederick, there are countless arguments about the kidney market. The following table attempts to summarize some of the notable arguments and their authors.

Major Issues and Objections	Proposed solutions and counter-arguments
Vulnerability argument: The kidney market involves many desperately poor people. Introducing the kidney market will enable the exploitation of the desperation of the poor (Satz, 2010).	Careful regulation can eliminate the vulnerability concern (for example, only people who are not desperate poor can sell their kidney) (Satz, 2010).
Weak agency argument: Participators in the kidney market does not have access to information about the consequence of the kidney transplant process (Satz, 2010).	• Every market involves weak agencies. The idea market in which its participators have the perfect information about the transaction does not exist (Frederick, 2010). • Careful regulation can mitigate the consequence of weak agency. For example, require the physician to inform and educate the kidney seller before the operation (Satz, 2010)
Mere-mean principle and Value-based account arguments: Human has dignity. Extracting kidneys from an individual is disrespectful because this process treats that individual as a merely mean (Kerstein, 2009).	Treating a part of an individual as a merely mean is different from treating an individual as a merely mean (Fabre 2006).
Slavery argument: commercializing a part of a human lead to commercializing the whole individual, leading to slavery (Satz, 2010)	Not every part of a human can be bought due to the privacy of personal identity. For example, we cannot perform a brain transplant (Frederick, 2010).

The kidney market is indeed so deeply controversial that Satz refuses to draw any policy recommendation about to band or not to ban this market, even though she is very much worried about the ethical issue of the kidney market (Satz, 2010). Therefore, this essay will not try to immediately draw any conclusion about whether we should legalize the kidney market, but rather evaluation some conditions in which it is possible to achieve an ethical kidney market. In the attempt to do so, I try to answer these three fundamental questions about kidney market:

(i) What is the difference between kidney and other common goods?

(ii) What is the difference between the kidney market and markets of other common goods?

(iii) Can government regulation enable the ethical kidney market?

I believe that the kidney market does generate some negative externalities to society that damage the liberties of a human. However, I also believe that the kidney market can save billions of kidney-failure patients. Therefore, I argue that *if* the government can impose several layers of regulation that can eliminate the pecuniary externalities, *then* it is very plausible and ethical to have a kidney market.

Kidney: One of the keys to freedom

One of the most critical civil rights is the right to bodily integrity. Bodily integrity emphasizes the inviolation of any human organs. Since every organ contributes to the life that one wishes to have, protecting bodily integrity is protecting the right to live of a liberal human. Every human organ has an exceptional value to the happy life of a liberal human.

Kidney, as other important organs, is essential for a flourishing life. Giving up one kidney, an individual is giving up part of their freedom. Indeed, although an individual can live with one kidney, when he forgives his extra kidney, he will need to adopt a new lifestyle that he may not wish to have. He is now put in a box with a limited set of lifestyles option than he had before. For example, he will not be able to eat some particular kind of food that he loves or to play some sport that he likes. Forcing someone to adopt a new lifestyle, even for the sake of saving another life, is against his freedom to live a happy life of that liberal individual.

The intrinsic difference between internal resources and external resources rests on their power to determine the freedom of an individual they belong to. When an individual gives up his external resources, he does not necessarily give up part of his freedom. Indeed, it is hard to see that one gives up part of his freedom when he sells his apple. However, when he gives up his internal resource, such as the kidney, a significant portion of his liberties is damaged. Indeed, adopting a prophylactic line that comes close to making the body inviolate is necessary to protect the human right and his liberties since it is too dangerous to adopt any line less bright (Eyal, 2009)

Kidney market and its Pecuniary externality: Poisoning human's liberties

Any individual has the right to pursue happiness. However, he may not be born with every resource necessary for his happy life. To pursue his happy life, he may have the right to exchange his resource with another agent in society. The ability to allocate scarce resources to help the participators in the exchange get closer to his desirable happy life is the primary function of the market.

However, as we discuss before, the internal resources of an individual are intrinsically different from external resources. Therefore, it is hard to believe that their markets are similar. To understand the difference between the market of internal and external resources, let's look at a thought experiment: There is a healthy individual who wants to sell his extra kidney to pursue a better and happier life. There is a patient with kidney failure who wants to buy a kidney to pursue a better and happier life. Both understand the risk of kidney surgery and the life consequence after this medical operation. After carefully consider the risk and return, they agree on a kidney transaction for financial return. With a buyer, a seller, and a volunteer transaction, this is indeed a kidney market with perfect information to the participant.

In this transaction, the action of buy and seller is just because their actions are voluntary and are motivated by a desire for a better and happier life. However, the existence of a market for kidney will create some negative externalities: people who do not want to sell their extra kidney now facing an opportunity cost of not selling their extra kidney. The existent of kidney market make kidney selling become a norm for people who want to pursue a better and happier life, just like the norm that people should sell their financial assets when they need money to pursue a better and happier life. However, selling a financial asset and selling a kidney are different because selling a kidney can damage liberties while selling a financial asset does not necessarily lead to a similar consequence.

From the initial transaction in which there is no cost of liberty, the action of selling a kidney is universalized and transformed into a market system that has negative effects on the third party of the initial transaction. Indeed, by creating pecuniary externalities for people who do not want to sell their kidney, kidney market force people to give up their liberties on the way of pursuing their own happiness. With the existent of the kidney market, the agents without preference of selling kidney will always incur a cost: opportunity cost (if he does not sell) and liberty cost (if he sells). This is the key difference of a kidney market to other markets of common goods.

Kidney market: Can we fix it?

Can the pecuniary externalities created by the kidney market be eliminated by some careful regulations from the government? To answer this question, it is essential to understand the origin of these externalities. The root of these negative externalities rests on the fact that the information about the ability of an individual to sell his extra kidney is published. Recall that pecuniary externalities of the kidney market are burdened on individuals who can sell his extra kidney but do not wish to do so; these externalities will not be likely to burden on individuals who cannot sell his kidney (anymore). Indeed, if an individual only has one kidney, he is virtually eliminated from the supply side of the kidney market. No one can ever force him to sell his kidney, even when he is in debt or declares bankruptcy. If the government can impose a regulation that secures the information about the ability to donate one's kidney, this magical policy will free the third party of the transaction from pecuniary externalities. Does this policy exist? Is it possible to absolutely secure one's information about his kidney from his family, his relatives, and the whole society? Sometimes, to maintain the complex relationship in the family and in his social network, we need to give up part of our privacy. Indeed, it is common for one to *voluntarily* share her top secrets with whom she loves and trusts, especially when she is vulnerable and emotionally sensitive. Leaking the secret information about the ability to donate a kidney, even only with her family, may have a detrimental effect on her liberties in the future. At present, to the best of my knowledge, it does not seem that there is a plausible regulation to protect her liberties. That magical policy, if it exists, must be very sophisticated to avoid damage to the human-human relationship. Finding such a policy is beyond the scope of this essay.

In conclusion, I appreciate the premium function of the market that enables humans to allocate our rare resources. However, it is too hard to deny that the kidney market generates the pecuniary externality that damage human liberties. Therefore, I believe that we should put the market of kidneys on pending until we can eliminate its severe damage to human liberties. With hope, we are looking forward to having a new policy that can eliminate the limitations of the kidney market and can enable a better life for kidney-failure patients soon.

References:

Eyal, Nir (2009). "Is the Body Special? Review of Cecile Fabre, Whose Body is it Anyway? Justice and the Integrity of the Person." *Utilitas*. 21 (2): 233-245.

Fabre, Cécile (2006). "Whose Body is it Anyway? Justice and the Integrity of the Person." *Oxford University Press.*

Frederick, Danny (2010). "A competitive market in Human Organs." *Libertarian Papers.* 2 (27): 1 - 21.

Herring, Jonathan, Jesse Wall (2017). "The nature and significance of the right to bodily integrity," *The Cambridge Law Journal*. 76 (3): 566-588.

Kerstein, Samuel (2009). "Kantian Condemnation of Commerce in Organs." *Kennedy Institute of Ethics Journal, The Johns Hopkins University Press,* 19 (2): 147 - 169.

National Kidney Foundation (2018). "Organ Donation and Transplantation Statistics." *National Kidney Foundation.* Accessed on November 27, 2018. Available online at https://www.kidney.org/news/newsroom/factsheets/Organ-Donation-and-Transplantation- Stats

Satz, Debra (2010). "Chapter 9: Ethical Issues in the Supply and Demand of Human Kidneys" in "Why Some Things Should Not Be for Sale: The Moral Limits of Markets" by Debra Satz (2010), *Oxford Political Philosophy,* 189 - 205.

Shaw, Rhonda, Lara J.M. Bell (2015). "Because you can't live on love': living kidney donors' perspectives on compensation and payment for organ donation." *Health Expectation.* 18 (6): 3201-12.

Steiger, Jürg (2011). "Why did mother nature provide us with two kidneys?" *Nephrology Dialysis Transplantation*. 26 (7): 2076–2078.

Wertheimer, Alan (2010). "Rethinking the Ethics of Clinical Research: Widening the Lens." *Oxford University Press.*