

Exploitation, Autonomy, and the Case for Organ Sales

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ABSTRACT: A recent argument in favor of a free market in human organs claims that such a market enhances personal autonomy. I argue here that such a market would, on the contrary, actually compromise the autonomy of those most likely to sell their organs, namely, the least well off members of society. A Marxian-inspired notion of exploitation is deployed to show how, and in what sense, this is the case.

I. INTRODUCTION

The relative scarcity of bodily organs for transplantation continues to cause headaches for those who must decide how to allocate them and heartache for those hoping to secure them. Continued controversy over how best to manage the system for procuring and distributing organs, especially those needed for lifesaving transplantation, keeps the debate at the forefront of health care ethics and public policy.¹ An important part of the debate focuses on how to increase the supply of bodily organs so that we might match the demand generated by those whose lives will end sooner than they otherwise would without receiving an organ transplant.

In his 1993 essay “Markets and morals: The case for organ sales,”² Gerald Dworkin argues that a free market in organs is an ethically justifiable way of remedying the current shortage of organs for transplantation. Dworkin’s limited aim in that paper is to canvass the moral reasons for and against a free market which would permit living persons to sell bodily organs they can live without. He concludes that the moral reasons for allowing such transactions outweigh those against, and thus that there is no compelling moral objection to the creation of such a market.³

I shall argue in this paper that an important kind of exploitation, with roots in the traditional Marxist version of that notion, poses a more serious objection to Dworkin’s argument than he considers, one which may tip the scales against the moral legitimacy of allowing a market in organs. I begin with a review of Dworkin’s argument in favor of such a market, then rehearse the main constituents of the traditional Marxist concept of exploitation, in the end suggesting how it casts doubt on the crucial assumption implicit

in the notion of a free market in organs, namely, that the option of selling organs increases personal autonomy. Unless this exploitation argument can be met, allowing people to sell their organs is morally unjustifiable.

II. DWORKIN'S ARGUMENT FOR A MARKET IN ORGANS

Dworkin begins by noting that there is a shortage of organs for people suffering "end stage organ failure," that is, persons whose lives will end unless they receive an organ transplant in the immediate future. He then notes that the fact that people are now entitled to donate nonregenerative organs such as kidneys, and to sell blood, semen, ova, hair, tissue, and other replenishable body parts and products, presupposes that they have the right to use their bodies as they wish. Thus, there is an assumption of self-ownership underlying the moral and legal permissibility of these practices, an assumption that expresses respect for personal autonomy. So, one reason for allowing a market in organs is that such a scheme is consistent with respect for persons' autonomy.⁴

It is important to note that this part of Dworkin's argument justifies allowing a market in bodily organs not only because such a practice is compatible with personal autonomy, but because it supposedly enhances or increases it. Moreover, allowing people to sell their organs adds to the supply of much-needed organs such as kidneys, thus benefitting those who need these organs to prolong their lives. So a second, consequentialist, objective is served by allowing a market in organs. Dworkin in effect offers what we might call a "mixed" moral rationale for allowing a market in morals: autonomy, as an end in itself, is respected, and the shortage of available organs for transplantation is eased. Taken together, these reasons appear to constitute a solid ethical rationale for allowing people to sell their bodily organs.

Notwithstanding these ethical goods, one common objection to allowing a market in organs is that the economically worst off members of society will be exploited, since they will be the least likely to resist the temptation to profit financially in this manner, and thus the burden of increasing the supply of desperately needed organs will fall disproportionately on them.⁵ Dworkin recognizes this fact when he notes that

Clearly, those who are most likely to wish to sell their organs are those whose financial situation is most desperate. 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.⁶

Though true, Dworkin wonders what those who lodge this complaint think follows from it, speculating that if the idea is that the poor are not making a free choice when they exercise their option to sell an organ this is either false, or, if true, implies a much wider restriction on autonomy than we would be comfortable allowing. Indeed, if the effect of poverty on persons' choices is such that the availability of unpalatable options is sometimes irresistibly tempting, then we ought to prohibit the poor from all high risk money-making

choices, including coal mining, high-rise construction work, and military service in times of war. Since such prohibitions would be intolerably paternalistic, the exploitation objection fails to show that a market in organs would be unethical.

But the exploitation objection may be construed not as a complaint about the distastefulness or difficulty of a choice, but as the claim that what appears to be an increase in personal autonomy is in fact a decrease in freedom of an especially insidious kind. If this claim is defensible, then prohibiting a market in organs on the ground that it would exploit the poor may not be objectionable paternalism after all, since one way to respect autonomy is to insure that it isn't compromised or undermined. How then might the option of selling an organ function to compromise rather than enhance autonomy?

Dworkin's assertion that a market in organs respects persons' autonomy is ambiguous. On the one hand, the choice to sell an organ may increase a person's viable options and in this way respect a person's autonomy by recognizing the individual as "sovereign over his own body." A viable option is one which enhances a person's overall well-being either by its mere presence in one's set of options or by its exercise. Sometimes simply having a choice, even if one never exercises it and has no intention to do so, enhances one's well-being, and, of course, actually exercising choices is frequently an expression of well-being. Thus, for example, the right to vote and the choice of careers to pursue enhance well being both by their mere presence in one's set of overall options and by their exercise. This seems to be what Dworkin has in mind when, in summarizing the reasons in favor of a market in organs, he claims that such markets "can increase both autonomy and well being."

On the other hand, the choice to sell an organ may be only superficially consistent with personal autonomy if it is merely an additional, though constraining, option. The point is that additional choices need not increase one's autonomy or well-being, since merely adding to a person's set of options sometimes compromises his liberty. This sort of "subtraction by addition" is made clear by Mill in *On Liberty* when he rejects the option of selling oneself into slavery on the grounds that it defeats the purpose of autonomy and is thus not a genuine choice at all. Choices which compromise autonomy because they are self-defeating are constraining options. If a market in organs provides those who would sell an organ with such a constraining option, then their autonomy will be compromised by such a market. Moreover, if such a market provides those who can afford to buy life-prolonging organs with a viable option they did not previously have, then the increase in those persons' autonomy and well-being requires a decrease in the autonomy and well-being of those who sell their organs. But this is exploitation.

III. MARXIAN EXPLOITATION AND ORGAN SALES

The intuition at the root of accusations of exploitation is often the general concern that someone or some group is being unjustly taken advantage of. This is the essence too of the traditional Marxist complaint about exploitation in

capitalism. The Marxist notion of exploitation is ambiguous, with some passages in the Marxian corpus apparently asserting that exploitation is a justice-based notion denoting the unfair way in which capitalists take advantage of the politically and economically weaker position of the proletariat. At other times, Marx seems to mean by exploitation something more value-neutral and technical, as when one builds a dam to harness the power of a river and thus "uses" the waterway for purposes of generating electricity. But the root of Marx's concerns about exploitation is that workers in capitalism are exploited in the sense that they sell their labor power for a wage, but then produce over and above the value of that wage, thus creating what Marx refers to as "surplus value." This surplus value is the capitalist's "profit." The usual interpretation of the injustice of capitalist exploitation is thus that capitalists get something for nothing. As G.A. Cohen has recently argued, exploitation in the Marxist sense is an assault on self-ownership, since workers own their bodies and their labor power but when they produce surplus value for capitalists their labor is in effect "forced."⁷ Recalling that self-ownership is the bedrock moral intuition behind respect for personal autonomy, at least in Dworkin's argument in favor of a market in organs, it follows that exploitation is a violation of personal autonomy. So, if a market in organs exploits the poor, it does so by violating their autonomy.

This interpretation of Marxian exploitation, then, not only explains the origin of profits in capitalism, it is necessarily related to the notion that a worker's choice to labor for a capitalist is "constraining" in the following sense.

Exploitation is not just what happens when a worker labors in a factory for a wage, it's what happens *to make that happen*. In other words, exploitation involves the background set of options which impel worker's to "choose" to labor for capitalists. Similarly, when we are reminded that women still earn on average only sixty seven cents to the dollar compared with men in comparable occupations, or that migrant farm workers or illegal aliens earn far less than the federal minimum wage in California orchards or New York "sweat shops," we are being told that these groups of people are in political and economic circumstances that enable them to be used to benefit others not in such restrictive circumstances. What is meant by the notion of "using" such people is not merely that they are underpaid and overworked. To be sure, this is part of the problem of exploitation. But the rest of the story is that the reasonable alternatives available to them are so limited that the addition of certain kinds of options may have a debilitating impact on a person's autonomy and well-being. Consider, for example, the legal option of refraining from pressing charges against one's assailant. This is usually regarded as part of the arsenal of choices persons need in order to be genuinely in control of their lives. But it has been amply demonstrated that some persons, most notably adult victims of domestic assault and battery, routinely exercise this option in self-defeating ways, sometimes irrevocably so.⁸ Thus, the presence of some choices in contexts of injustice actually compromises autonomy and well-being. Moreover, if we think of a person's viable options as his real autonomy, then the presentation of additional choices

which are constraining will leave a person worse off in terms of autonomy and well being than he would have been without those choices.

The general point about Marxian exploitation is that if people's options are constrained by unjust economic arrangements or racial or gender bias, or their set of viable options is significantly smaller than it would otherwise be because of these and other systemic injustices, then the victims of such a system are plausibly regarded as less autonomous to begin with than those who benefit from the injustice. Consequently, additional choices which presuppose and/or reinforce the status quo may be incompatible with genuine autonomy. This is a reality Dworkin ignores when he claims that injustice is independent of autonomy.⁹ He asserts that

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.¹⁰

Three points are especially germane here. First, Dworkin's point about paternalism assumes that the economic inequality of capitalism is unfair, but as I've just argued, given that injustice, personal autonomy and well-being will be radically different for different people depending on their position as oppressor or oppressed, beneficiary or victim, of that injustice. Consequently, any proposed additional choices must be mapped onto existing unjust inequalities to determine whether and to what extent they really do enhance a person's autonomy. Secondly, whether poor people perceive a market in body organs as "increasing their well-being" is an empirical question. Perhaps they do not. The possibility that such a choice may cause psychic distress for those whose economic plight is so desperate that they feel they must seriously consider selling a bodily organ to survive is one Dworkin acknowledges but dismisses as not serious enough to outweigh the good created by such a market. But surely someone who feels compelled by dire economic circumstances to sell illegal drugs, or prostitute him or herself, or even take in other people's laundry or clean others' toilets for a living does not necessarily view such options as "increasing" their well-being. Rather, it may well be perceived as a necessary evil; as a choice that makes their already miserable lives even worse by requiring that they degrade themselves in order to put food on the table. Third, even if poor people do perceive the option of selling an organ as an increase in their liberty, it hardly follows that the availability of such an option *is* an increase in personal autonomy. The phenomenon of "false consciousness," a process by which people sometimes misrepresent reality in an effort to cope with otherwise intolerable conditions, may be especially applicable to cases like this where those who are the least well off economically in a society which prizes economic status are the most likely to miscalculate the benefits and drawbacks of securing ready cash in exchange for a bodily organ.

Though it would be implausible to analogize wholly from the Marxist diagnosis of the plight of the proletariat in early industrial capitalism to the impact of a market in organs on the poor in contemporary Western democracies like ours, the point is that to allow a market in organs is to take advantage

of the already highly constrained set of options of the least well off members of society. In short, what appears to be an increase in autonomy and well-being for such persons may actually be an increase in vulnerability, hence the propriety of the term "exploitation" as a kind of "taking advantage of" the weakness of others.

IV. CONCLUSION

As noted earlier, Dworkin's reply to the "exploitation argument" is that it would be paternalistic to deny the poor the choice of selling an organ. He rhetorically asks, "What would your reaction be to prohibiting purchases from individuals whose average income is less than 80% of median family income?," assuming that our reaction would be one of horror at such an obviously unjustifiable paternalistic exclusion of those in the lower 40% of income groups from participating in a market in organs. Somewhat amazingly, however, Dworkin fails to appreciate that one's reaction to this proposal might instead be "Who then would sell organs?" Very few, if any, people above the lower 40% excluded from the market would ever wish to sell an organ (as Dworkin himself recognizes), so the effect of the "paternalistic" measure he assumes nobody would agree to would be to eliminate not only the poor from the market, but the market itself. This means, of course, that the poor are essential to the existence of a market in organs, which in turn means that for such a market to achieve one of the chief ethical goods Dworkin says (partly) justifies its existence (namely, increasing available organs), it is necessary that the poor participate as the vendors of the organs. Put differently, it is necessary that there be poor people and that we allow them to participate in such a market, for otherwise neither the market for such organs will exist, nor the moral good to be accomplished thereby attained. But now the concern over unjustifiable paternalism is seen for what it really is: a red herring. The real problem with excluding the poor from participating in a free market in organs is that the market can't exist without them, not that we are somehow infringing their "liberty" by not letting them participate.

In sum, the poor will be exploited by a market in organs because their comparatively limited range of viable options (i.e., their limited real autonomy) is being taken advantage of partly in the sense that many of them will be unable to resist the temptation to ease their economic woes (however temporarily) by selling an organ, and partly because their limited range of viable options is itself essential to the existence and functioning of such a market. That is, their being exploited to begin with is necessary for them to be exploited anew. But to say this is to say that those who are relatively well off economically require others who are worse off economically so that they can become even better off. If this isn't exploitation of the worst sort then I don't know what is. So, the goods accomplished by allowing a market in organs (i.e., respect for autonomy and an increase in organs for those who need them) do not outweigh the evil of such a system of increasing the supply of such organs. Looting the bodies and souls of the least well off members of society does not a morally justified market in organs make.

Endnotes

1. See, for example, Gary S. Becker, "How Uncle Sam Could Ease The Organ Shortage," *Business Week*, January 20, 1997, p. 18; Gina Kolata, "Hospitals Argue Over Rules For Priority of Transplants" (New York Times, reprinted in *Detroit Free Press*, December 17, 1996, p. 2f); Stephen Baker, "Who Gets a Liver—and Who Doesn't?", *Business Week*, December 9, 1996, p. 153.

2. Reprinted in *Morality, Harm, and the Law*, Westview, 1994, pp. 155-161.

3. There may, of course, be compelling *practical* reasons for not allowing such a market.

4. Dworkin rightly sets aside the purely practical questions whether such a market would in fact increase the supply of needed organs, and whether implementation problems would be so significant as to make the scheme impractical.

5. Moreover, on the reasonable assumption that the cost of such organs will be relatively high, if only because there will otherwise be little incentive to sell an organ, then the least well off members of society will only be able to participate in such a market by supplying it with organs. I develop this point below.

6. Dworkin, *id.*, p. 157.

7. For a good review of Cohen's most recent book *Self-ownership, Freedom and Equality* (Cambridge, 1995), see Marcus Roberts, "Analytical Marxism—an ex-paradigm?", *Radical Philosophy* 82, March/April, 1997, pp. 17-29.

8. See my "Paternalism, battered women, and the law" (*Journal of Social Philosophy*, forthcoming in 1998).

9. Curiously, Dworkin argues elsewhere (in his essays on paternalism) that paternalism may be justified in cases where even mature adults miscalculate the significance (e.g., weigh the values wrong) of such options as riding a motorcycle without wearing a safety helmet. One might suspect that this would be likely to happen to many of the poor if we were to allow a market in organs. If so, then why wouldn't rejecting a market in organs for paternalistic reasons be justifiable?

10. Dworkin, *id.*, p. 157.