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Paying for Kidneys: The Case against Prohibition

ABSTRACT. We argue that healthy people should be allowed to sell one of their kidneys while they are alive—that the current prohibition on payment for kidneys ought to be overturned. Our argument has three parts. First, we argue that the moral basis for the current policy on live kidney donations and on the sale of other kinds of tissue implies that we ought to legalize the sale of kidneys. Second, we address the objection that the sale of kidneys is intrinsically wrong because it violates the Kantian duty of respect for humanity. Third, we address a range of consequentialist objections based on the idea that kidney sales will be exploitative. Throughout the paper, we argue only that it ought to be legal for an individual to *receive payment* for a kidney. We do not argue that it ought to be legal for an individual to *buy* a kidney.

OUR SOCIETY PLACES A HIGH PRIORITY on value pluralism and individual autonomy. With few constraints, people make personal decisions regarding what they wish to buy and sell based on their own values. There are laws prohibiting certain kinds of trade; these laws are generally aimed at preventing commercial interactions that are associated with serious harms. Payment to living organ donors has been perceived to be just such a harmful transaction.[1]

The Uniform Anatomical Gift Act (UAGA), originally approved by the National Conference of Commissioners on Uniform State Laws in 1968, was intended to permit individuals to specify their desire to donate organs at the time of their deaths (Uniform Anatomical Gift Act, *Uniform Laws Annotated* 8, 1972). Although the framers of the proposed act considered the possibility that a market for organs could develop, they did not conclude that buying and selling organs was intrinsically wrong. The UAGA was, in fact, silent on the question of payment for organs. Yet, today, every major organization that has an official position on the mat-

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ter maintains that payment for organs is unequivocally unethical and must be legally prohibited. Why did this shift occur?

In the early 1980s, transplantation was expanding rapidly due to the introduction of improved immunosuppressive drugs. The need for a national system of organ procurement and allocation was identified and codified in the National Organ Transplantation Act (NOTA) of 1984 (Public Law No. 98–507, amended by Public Law No. 100–607 and Public Law No. 101–616). At the same time, organ brokerage began to develop (U.S. Congress 1984, pp. 238–56). A strongly adverse public reaction to this development led to the inclusion in NOTA of a prohibition against the provision of any "valuable consideration" in exchange for a transplantable organ. Thus, all forms of payment for organs were made illegal, based on the ethical judgment that the harms of allowing payment substantially outweighed the benefits (Childress 1996).

We believe that possible harms arising from allowing payment for organs have been overstated, and that healthy people should be allowed to sell one of their kidneys while they are alive—that kidney sales by living people ought to be legal. In what follows, we will present the case for the legalization of live kidney sales and answer objections to it. We confine our discussion to kidneys because the kidney is a paired organ that can be removed safely with little impact on the health of the donor. Kidney transplantation, moreover, is by far the most common of all transplants, and the discrepancy between kidney supply and need is the greatest. (Our argument does, however, bear on the sale of parts of other, nonpaired, organs, as we discuss in the section entitled "The *Prima Facie* Case for Kidney Sales.")

In presenting our case, we start by making several important preliminary points. We then present an initial argument for allowing healthy people to sell one of their kidneys. This initial argument is not conclusive in itself, but we think that it constitutes a powerful *prima facie* or presumptive case for not prohibiting kidney sales. Next we address the view that kidney sales are intrinsically wrong. Finally, we address the objection that kidney sales are wrong because paying for organs is exploitative. We hope to show that there are very good reasons for overturning the prohibition on payment for kidneys, and that neither the "intrinsically wrong" objections nor the worries about exploitation withstand careful scrutiny.

PRELIMINARY POINTS

First, we are arguing for the claim that it ought to be legal for a person to *be paid* for one of his or her kidneys. We are not arguing that it ought to be legal for a potential recipient to *buy* a kidney in an open market. We propose that the buyers of kidneys be the agencies in charge of kidney procurement or transplantation; that is, we propose that such agencies should be allowed to use financial incentives to acquire kidneys. We assume that allocation of kidneys will be based on medical criteria, as in the existing allocation system for cadaveric organs. Kidneys will not be traded in an unregulated market.[2] A similar system is currently in place for blood products: a person can receive money for providing blood products, but one's chances of receiving blood are distinct from one's financial status. We further note that transplant recipients or their agents—e.g., insurance companies, Medicaid—pay for organs now, compensating the organ procurement organization that organizes the organ retrieval, the surgeon who removes the organ, the hospital where the organ is procured, and so forth. The only component of the organ procurement process not currently paid is the most critical component, the possessor of the kidney, who is *sine qua non* for organ availability.

Second, we believe the legalization of kidney sales will increase the number of kidneys that are transplanted each year and thus save the lives of people who would otherwise die. We base this belief on two views that seem to us very plausible: first, that financial incentives will induce some people to give up a kidney for transplantation who would otherwise not have done so; and second, that the existence of financial incentives will not decrease significantly the current level of live kidney donations. The first view seems to us to follow from the basic idea that people are more likely to do something if they are going to get paid for it. The second view seems to us to follow from the fact that a very large majority of live kidney donations occur between family members and the idea that the motivation of a sister who donates a kidney to a brother, or a parent who donates a kidney to a child, will not be altered by the existence of financial incentives. Although we think these views are plausible, we acknowledge that there is no clear evidence that they are true. If subsequent research were to establish that the legalization of kidney sales would lead to a decrease in the number of kidneys that are transplanted each year, some of the arguments we make would be substantially weakened.[3]

Third, we are arguing for allowing payment to living kidney donors, but many of the kidneys available for transplantation come from cadavers.

We believe that payment for cadaveric organs also ought to be legalized, but we will not discuss that issue here. If we successfully make the case for allowing payment to living donors, the case for payment for cadaveric kidneys should follow easily.

THE *PRIMA FACIE* CASE FOR KIDNEY SALES

With these preliminary points in mind, we will proceed to the initial argument for permitting payment for kidneys.[4] This argument is based on two claims: the "good donor claim" and the "sale of tissue claim."

The good donor claim contends that it is and ought to be legal for a living person to donate one of his or her kidneys to someone else who needs a kidney in order to survive. These donations typically consist of someone giving a kidney to a sibling, spouse, or child, but there are also cases of individuals donating to strangers. Such donations account for about half of all kidney transplants.[5] Our society, moreover, does not simply *allow* such live kidney donations. Rather, we actively praise and encourage them.[6] We typically take them to be morally unproblematic cases of saving a human life.

The sale of tissue claim contends that it is and ought to be legal for living persons to sell parts of their bodies. We can sell such tissues as hair, sperm, and eggs, but the body parts we focus on here are blood products. A kidney is more like blood products than other tissues because both are physical necessities: people need them in order to survive. Our proposed kidney sales are more like the sale of blood products in that both involve the market only in acquisition and not in allocation: the current system pays people for plasma while continuing to distribute blood products without regard to patients' economic status, just as we propose for kidneys. We do not typically praise people who sell their plasma as we do people who donate a kidney to save the life of a sibling. At the same time, most people do not brand commercial blood banks as moral abominations. We generally take them to be an acceptable means of acquiring a resource that is needed to save lives.[7] It is doubtful, for instance, that there would be widespread support for the abolition of payment for plasma if the result were a reduction in supply so severe that thousands of people died every year for lack of blood products.

If both the good donor claim and the sale of tissue claim are true, we have at least an initial argument, or *prima facie* grounds, for holding that payment for kidneys ought to be legal. The good donor claim implies that it ought to be legal for a living person to decide to transfer one of his or

her kidneys to someone else, while the sale of tissue claim implies that it ought to be legal for a living person to decide to transfer part of his or her body to someone else for money. It thus seems initially plausible to hold that the two claims together imply that it ought to be legal for a living person to decide to transfer one of his or her kidneys to someone else for money.

Of course, there seems to be an obvious difference between donating a kidney and selling one: motive. Those who donate typically are motivated by benevolence or altruism, while those who sell typically are motivated by monetary self-interest.[8] The sale of tissue claim suggests, however, that this difference on its own is irrelevant to the question of whether kidney sales ought to be legal, because the sale of tissue claim establishes that it ought to be legal to transfer a body part in order to make money. If donating a kidney ought to be legal (the good donor claim), and if the only difference between donating a kidney and selling one is the motive of monetary self-interest, and if the motive of monetary self-interest does not on its own warrant legal prohibition (the sale of tissue claim), then the morally relevant part of the analogy between donating and selling should still obtain and we still have grounds for holding that selling kidneys ought to be legal.

There is also an obvious difference between selling a kidney and selling plasma: the invasiveness of the procedure. Phlebotomy for sale of plasma is simple and quick, with no lasting side effects, while parting with a kidney involves major surgery and living with only one kidney thereafter. It is very unlikely, however, that there will be any long-term ill effects from the surgery itself or from life with a single kidney.[9] Indeed, the laws allowing live kidney donations presuppose that the risk to donors is very small and thus morally acceptable. The good donor claim implies, then, that the invasiveness of the procedure of transferring a kidney is not in and of itself a sufficient reason to legally prohibit live kidney transfer. If the only difference between selling plasma and selling a kidney is the risk of the procedure, and if that risk does not constitute grounds for prohibiting live kidney transfers, then the morally relevant part of the analogy between selling plasma and selling a kidney still should obtain and we still have grounds for holding that kidney sales ought to be legal.

The point of the preceding two paragraphs is this: if we oppose the sale of kidneys because we think it is too dangerous, then we also should oppose live kidney donations. But we do not oppose live kidney donations because we realize that the risks are acceptably low and worth tak-

ing in order to save lives. So, it is inconsistent to oppose selling kidneys because of the possible dangers while at the same time endorsing the good donor claim. Similarly, if we oppose kidney sales because we think people should not sell body parts, then we should also oppose commercial blood banks. But most people do not oppose blood banks because they realize that the banks play an important role in saving lives. So, it is inconsistent to oppose selling kidneys because it involves payment while at the same time endorsing the sale of tissue claim.[10]

The considerable emotional resistance to permitting kidney sales may be based on a combination of distaste for payment and worry about risk. But if neither of these concerns on its own constitutes defensible grounds for opposing payment, then it seems unlikely that the two of them together will do so.

This initial argument does not imply that we should legalize the sale of hearts and livers. The initial argument holds only that, if it is medically safe for living people to donate an organ, then people should also be allowed to sell that organ. But it is not medically safe for a living person to donate his or her heart or liver. Our reliance on the good donor claim does, however, commit us to the idea that if it is morally correct to allow someone to donate an organ or part of an organ, then it is morally correct to allow someone to sell that organ or organ part. If, therefore, it is morally correct to allow people to donate liver lobes and parts of lungs, then, according to our initial argument, it ought to be legal for a person to sell a liver lobe or part of a lung as well.

Our proposal does not address the purchase of kidneys, which is a separate question. Many of the arguments against legalizing the purchase of kidneys do not apply to the sale of kidneys. For example, one argument against permitting the buying of kidneys is that it will lead to fewer kidneys for transplantation overall. Another argument is that while allowing individuals to purchase kidneys might not reduce the overall number of kidneys available for transplantation, it will reduce the number of *donated* kidneys and harm the poor who will not be able to afford to buy a kidney. Both arguments rest on empirical claims that are often stated as fact, yet have no supporting evidence. Even if the empirical claims were accurate, moreover, their moral importance could be disputed. Perhaps there are powerful moral reasons to legalize the buying of organs even if doing so leads to fewer organs overall or reduces the chances of a poor person's receiving a kidney transplant. Then again, perhaps a negative effect on the overall supply of kidneys or on the transplantation prospects

for the poor will turn out to be a conclusive reason not to legalize the buying of kidneys. The important point is that our proposal will not be affected either way. As already noted in our preliminary points, our proposal can be reasonably expected both to increase the overall number of kidneys for transplantation and to increase the chances that a poor person who needs a kidney will receive one. Therefore, in arguing for the legalization of kidney sales, we put aside the separate question of whether buying kidneys ought to be legal as well.

Many people continue to oppose kidney sales, however, and some do so directly in the face of the good donor claim and the sale of tissue claim. For them, there are two possible methods of attack. First, they can argue that there *is* a morally relevant intrinsic difference between kidney sales and both kidney donations and plasma sales, the considerations offered above notwithstanding. Second, they can argue that while there might be nothing intrinsically wrong with selling kidneys considered in isolation, the real world circumstances under which these sales would take place would inevitably lead to exploitation. In the next section, we will examine the view that selling kidneys is intrinsically wrong, and, in the subsequent section, the view that kidney sales lead to exploitation.

THE INTRINSIC IMMORALITY OF SELLING ORGANS

The Kantian View

The most common reason offered for the intrinsic wrongness of paying people for kidneys is that doing so violates the dignity of human beings or is incompatible with proper respect for persons. This opposition to kidney sales is usually grounded in the second formulation of Kant's categorical imperative, which tells us that we should never treat humanity, whether in ourselves or in others, merely as a means (Kant 1983, p. 36). But by selling a kidney, according to this Kantian reasoning, we are treating humanity in ourselves merely as a means. Mario Morelli (1999, p. 320) summarizes the position in this way:

> The question that needs to be addressed is why, on a Kantian view, selling a body part is not respecting one's humanity, whereas donating a kidney may not be objectionable, at least sometimes. The short answer is, I think, that selling oneself or part of oneself is always treating oneself as a mere means. It is treating oneself as an object with a market price, and thus a commodity. The transaction, the selling, is done for the receipt of the money to be obtained. One's humanity, one's body, is being treated only as a means

> and not as an end in itself. It is not simply the giving up of a body part that is objectionable: it is giving it up for the reason of monetary gain. However, there are forms of alienation of the body, such as donation of a kidney to save another's life, that would not violate the principle. . . . One is not using oneself as a mere means if one donates a kidney for such beneficent purposes.

In the Kantian view, then, to sell one's kidney is to violate a duty to oneself; it is to violate the duty not to treat the humanity in oneself merely as a means (see Chadwick 1989, pp. 131–34; Kass 1992, p. 73).

Unfortunately, this Kantian view seems to condemn not only kidney sales but also the sale of plasma. Cynthia Cohen has attempted to solve this problem by drawing a distinction between essential parts of the body and nonessential parts. She writes, "[A]ny part that is necessary for the functioning of the whole person, Kant asserts, is endowed with the dignity of that person. Kidneys and testicles are such essential body parts; hair [and presumably a pint of plasma] is not" (Cohen 1999, p. 292). Cohen (p. 294) continues,

> To sell human beings and those bits and pieces integral to them as embodied selves is to violate that which is essential to them. . . . [A]s it violates human dignity to sell whole persons, so, too, it violates that dignity to sell body parts integral to whole persons. Thus, it is ethically acceptable to sell human hair, for this accoutrement is not integral to the functioning of the whole person, but it is not ethically acceptable to sell vital organs . . . .

We have a duty to treat humanity in ourselves as an end, according to this Kantian view. And while selling nonessential body parts does not violate that duty, selling essential body parts does.

The Flaws in the Kantian View

There are two problems with this approach. First, even if selling a kidney does violate a Kantian duty to oneself, this still would not justify a legal prohibition on kidney sales; second, it is doubtful that selling a kidney does violate a Kantian duty to oneself.

Even if selling a kidney does violate a Kantian duty to oneself, it is still far from clear that we are justified in having laws and public policies against payment for kidneys. We generally do not use the law to enforce duties to oneself, and the Kantian opponents of kidney sales have not explained why we should use the law to enforce a duty to oneself in this particular case (see Dworkin 1994, pp. 155–61; Radcliffe-Richards 1996, pp. 384–87).

We can put the dubiousness of basing opposition to payment for kidneys on Kantian duties to oneself in terms of two different senses of autonomy. The first sense of autonomy is a thin sense—autonomy as noninterference. According to this sense, people are acting autonomously when they make their own self-regarding decisions free from interference by others. This sense of autonomy is neutral on the nature of the decisions that people make and on the decision-making processes that they go through: if people are not harming someone else, on the thin, noninterference conception of autonomy, then they should be left alone to do whatever they want, regardless of what it is or why they choose to do it. The second sense of autonomy is the robust Kantian notion of autonomy as self-legislation. According to this view, people respect their own autonomy only when they are motivated by rational moral law. This sense of autonomy is definitely *not* neutral on the nature of a person's decision or decision-making process. Even if an action is entirely self-regarding, it can still violate Kantian autonomy if it fails to live up to certain very high standards of self-respect or if it is grounded in the wrong kind of motive.

The thin sense of autonomy implies that we should legalize kidney sales, for the decision to sell a kidney is self-regarding, so the noninterference model tells us that each person should be allowed to make his or her own decision. According to Morelli (1999, p. 320) and Cohen (1999, p. 294), the robust Kantian sense of autonomy implies that it is wrong to sell a kidney because doing so involves the wrong kind of motive and thus violates the rational moral law. But even if Morelli and Cohen are right and selling a kidney does violate Kant's categorical imperative, this will not prove that kidney sales ought to be illegal. For the robust Kantian sense of autonomy is not the proper guide for governmental legislation. We do not make laws to enforce the Kantian duty to respect humanity in oneself. Governmental law making is, rather, primarily geared toward the promotion of autonomy in the thin, noninterference sense.

The concept of informed consent is instructive here. Over the course of the last 50 years or so, we have developed laws on informed consent to ensure that individual patients have the liberty to make their own decisions about what will happen to their bodies. The value underlying these laws is the noninterference sense of autonomy (see President's Commission 1982, p. 6). Do our informed consent laws have as their goal the promotion of robust Kantian duties to oneself? No, they do not. In fact, the goal of informed consent laws is to *prevent* the imposition of robust moral views on the individual. Were we to try to use the law to enforce

Kantian duties to self, we would have to discard a great deal of informed consent legislation, for informed consent legislation is intended to allow people to make decisions on the basis of their own views of personal morality, regardless of whether their views accord with Kantianism. Because views of Kantian duties to self should have no role in legislative decisions about informed consent in general, they should not have any role in legislative decisions about kidney sales in particular.

But that is not the worst of it for the Kantian opposition to selling kidneys. The worst of it is that there is no good reason to think that selling a kidney violates even the robust Kantian sense of autonomy.[11]

Kant says that we ought not to treat humanity in ourselves merely as a means. But my kidney is not my humanity. Humanity—what gives us dignity and intrinsic value—is our ability to make rational decisions (see Hill 1992, pp. 38–41), and a person can continue to make rational decisions with only one kidney. Thus, Cohen's distinction between essential and nonessential parts does not help her case, for a person can function perfectly well with a single kidney and so a second kidney cannot be essential to personhood. Selling a kidney does not destroy or even seriously compromise what Kant says is intrinsically valuable and dignified (see Nelson 1991, p. 69).

The problem with the Kantian opposition shows up clearly when we consider the claim by Morelli (1999, pp. 318–24) and Cohen (1999, pp. 292–95) that kidney sales are immoral because they violate "bodily integrity." If we take "bodily integrity" in its most literal sense, then selling a kidney clearly violates it. But such literal violations occur whenever a person sells or donates plasma or gives a kidney to a relative, so opponents must not be claiming that it is wrong to engage in any activity that breaks the surface of the flesh and extracts a part of the body. What, then, is the sense in which selling a kidney violates "bodily integrity" but selling other body parts does not? As Morelli (1999, p. 321) tries to explain it,

> . . . a reasonably strong case can be made for the value of bodily integrity in terms of the Kantian principle of respect for the persons, insofar as human persons are embodied. After all, it is undeniable that our existence as rational and autonomous beings and the exercise of our powers of rationality and autonomy are dependent to a considerable extent on our physical well-being. . . . [But] what we do to or with our bodies can . . . constitute or contribute to the impairment of our capacities for rationality and autonomy.

The underlying moral idea is that it violates one's humanity to engage in activities that "impair" one's "rationality and autonomy." That is why

suicide and excessive drug use are wrong. There is, however, no reason to believe that selling a kidney impairs one's rationality and autonomy in any significant respect. The medical data provide no evidence that individuals who have given away a kidney suffer any grave limitations or restrictions on their future decision making.

The reason that even a Kantian should accept kidney sales stands out sharply when we contrast that activity with suicide and selling oneself into slavery. Suicide and selling oneself into slavery clearly violate the Kantian duty to oneself. They violate this duty by destroying one's humanity through annihilation of the ability to make rational decisions. But while death and slavery are incompatible with rational decision making, selling a kidney is not. A kidney seller may be incapacitated while recovering from surgery, but many acceptable activities (such as contracted labor and military service) involve giving up decision making in the short term for long-term benefit. Nor are the kidney seller's future options significantly limited: there are few, if any, intellectual side effects or physical sequelae. And the fact that two athletes (Sean Elliot and Pete Chilcutt) have played in the National Basketball Association with only one kidney makes it difficult to argue that having one kidney compromises the normal range of physical activity.

There is, moreover, an additional problem facing those who would try to find Kantian grounds for opposing kidney sales while allowing kidney donations. Kant argued that the moral status of an action was based entirely on the motive behind it. A person who sells a kidney, however, may have motives that do much better on the Kantian scale than those of a person who donates a kidney. A living donor, for instance, could be motivated entirely by illogical guilt and an irrationally low estimation of self-worth, or by an emotional need for grateful adoration, or by a desire to indebt and manipulate someone else. A kidney seller, by contrast, may be motivated by the idea that he ought to save someone else's life if it is in his power and that he ought to earn the money necessary to pay for his child's education. Needless to say, we do not mean to cast aspersions on the motives of those who donate their kidneys, nor to suggest that all those who sell their kidneys will have morally admirable motives. We mean merely to highlight another way in which Kantian moral theory fails to justify both the practice of kidney donation and the prohibition on kidney sales. Kant's moral theory, concerned as it is with motive, has its place in the first-person deliberations of moral agents; it is ill-equipped to draw

the third-person legal distinctions that the opponents of kidney sales want to maintain.

So far, the discussion of Kant has focused on duties to self. One might wonder, however, whether the doctor who performs the operation to remove a kidney from a healthy person violates a Kantian duty to others, by treating the person who is selling the kidney as a mere means. But if persons do not violate their own humanity when they decide to have a kidney removed, it is hard to see how a doctor can be violating a person's humanity by assisting in its removal. It seems that the doctor's actions have an end in which the other person can "share," and if another person can "share in the end of the very same action," then the person performing the action is not, according to Kant, violating the humanity of the other (Kant 1964, p. 97). Recall, moreover, that those opposed to organ sales must give reasons against organ sales that do not also lead to the condemnation of live organ donations. It is, once again, difficult to see how someone can argue—without begging the question of whether kidney sales are intrinsically wrong—that a doctor who performs the operation to remove the kidney from a live donor is treating that person as an end while a doctor who performs the same operation to remove the kidney from a seller is treating that person merely as a means. (Some people might believe that legalizing kidney sales will violate humanity by leading to exploitation or coercion, a matter that can be addressed adequately only by attending to large-scale real-world societal conditions, not by looking at isolated hypothetical cases. We examine this type of argument in the subsequent section on exploitation.)

The "Kidneys Are Not Property" Claim

The problems with the Kantian opposition also plague the related objection that kidneys cannot legitimately be sold because they are not *property*—that is, not possessions that are ours to sell. Selling a kidney, according to this objection, is morally equivalent to selling a person. And just as the latter violates fundamental moral restrictions on property and ownership, so too does the former. Charles Fried (1978, p. 142) has this idea in mind when he says that "when a man sells his body he does not sell what is his, he sells himself," as does Cohen (1999, p. 294) when she writes:

> [H]uman beings and their integral parts are not the sorts of objects that can become the property of others, even if their market equivalent is given in

> exchange. . . . To sell human beings and those bits and pieces integral to them as embodied selves is to violate that which is essential to them.

In a certain sense, selling one's body may be equivalent to selling oneself, for one may not be able to exist without one's body. It may even make sense to say that one *is* one's body. If I sell my body to someone else, then that person will have total control over my body, and a person who has total control over my body has something very close to total control over me. When I cede total control of my body to someone else, in other words, I have, in effect, enslaved myself, which is clearly a Kantian violation.

But although Cohen and Fried are right to say that the sale of one's body is morally equivalent to self-enslavement, it is a mistake to go on to claim that kidney sales are wrong in the same way (Cohen 1999, p. 295). The error is to equate selling one's kidney with selling one's *entire* body. A person who sells a kidney still has the rest of his or her body left. The seller can continue to control his or her own destiny. Indeed, the money from the sale of a kidney may enhance the range of choices for the seller by increasing rather than decreasing the capacity to control the future. That one's *entire* body is not the sort of thing that should ever become property does not imply that a *part* of one's body can never become property (see Andrews 1986, p. 37; Campbell 1992, p. 36).

None of what we have said so far is meant to establish that selling a kidney must accord with a universal view of duties to oneself. Undoubtedly, many people believe that selling a kidney would be the wrong thing for them to do. Other people no doubt believe that selling a kidney is right for them. We have seen no justification—Kantian or otherwise [12]—for using the law to impose the view of the first group upon the second.

EXPLOITATION

Much of the opposition to payment for kidneys is based not simply on Kantian duties to self but on the real-world circumstances in which such a practice would occur. A market in kidneys, it is said, will inevitably be exploitative, and for this reason it should be prohibited.[13] Some of the worries about exploitation are fueled by stories in the popular press of the international black market in kidneys. Such stories typically involve desperately poor people from underdeveloped countries selling their kidneys to wealthy individuals from developed countries. The wealthy individuals pay very large sums for an uncertain product; the poor people

receive their payment and are hastily returned to their desperate lives, with poor medical follow-up and without one of their kidneys (see Finkel 2001, pp. 28–31).

The international black market in kidneys is worthy of moral condemnation, and the popular press has been right to expose it. But the horrible stories do not constitute justification for a blanket rejection of payment for kidneys in this country because there are two crucial differences between the international black market and the legal domestic program we propose.

First, in our proposal the medical setting in which legal kidney transfer would take place is that of contemporary transplantation, safe and medically sophisticated. Screening would select only potential kidney sellers whose kidneys are suitable for transfer and whose medical condition predicts minimal risk. Follow-up care would be scrupulous. Sellers would receive exactly the same medical attention and treatment that living kidney donors now receive in this country. The people to whom the kidneys are transferred will also receive the same medical attention and treatment that kidney recipients currently receive.

Second, the domestic program we propose involves money only in the acquisition of kidneys, unlike the international black market. Allocation of kidneys would be based on medical criteria, as it is today. No private individual would be able to buy a kidney outside the system. Poor individuals will have just as much chance of receiving one of the kidneys.

Disproportionate Burden

These two differences between an international black market and a legal domestic program will not, however, alter everyone's belief that payment for kidneys is exploitative. The problem, as some will continue to believe, is that even if the *benefits* are spread evenly across the economic spectrum, the *burdens* will still fall disproportionately on the poor. For it is the poor who will sell, not the rich, and there has to be something deeply morally wrong with a proposal that results in the neediest parting with a kidney while the fortunate do not.

Though this objection seems solid, the reasoning behind it is vague. When the ideas underlying the objection are clarified, it turns out to be much less substantive than it initially appears.

There are two ways of understanding the objection. First, one can hold that kidney sales are morally unacceptable no matter who does the selling and that the proposal to legalize such sales is especially pernicious be-

cause the poor will be disproportionately affected. Second, one can hold that kidney sales *per se* are morally unobjectionable, but that we know in the real world the sellers will be disproportionately poor, and this economic disproportionality makes the proposal morally unacceptable. We will examine these two versions of the objection in order.

If payment for kidneys were morally unacceptable no matter who did the selling, then it would be especially offensive that the sellers are disproportionately poor; an activity that victimizes everyone it touches is made worse when those affected are especially vulnerable. The problem with this objection, however, is that it assumes without argument that such payments are morally unacceptable and thus ought to be illegal, when the moral and legal status of kidney sales is just what is under dispute. The objection thus begs the question. Of course, many people believe there are independent reasons for thinking that paying for kidneys is immoral and ought to be illegal, regardless of who receives the payment. But they have to articulate and defend those reasons before they can legitimately claim that economic factors will make matters worse. Pointing out that most kidney sellers will be poor will not on its own strengthen a weak argument for the intrinsic wrongness of allowing kidney sales.

The second way of understanding the objection contends that paying for kidneys might not be intrinsically wrong, but such sales ought not be allowed because the resulting situation in which the poor sell and the rich do not would be morally unacceptable. Some people might be drawn to this objection by a concern for equality, believing that it is morally unacceptable to implement any policy that widens the gap between rich and poor. An egalitarian principle of this sort requires argument, but even if we grant for the moment the essential importance of equality, it still does not speak against paying for kidneys. If paying for kidneys is legalized, the ratio of poor people with only one kidney to rich people with only one kidney probably will increase. The kind of equality that matters to egalitarians, however, concerns not the presence of one kidney versus two but economic and political power. There is no reason to think that allowing payment for kidneys will worsen the economic or political status of kidney sellers in particular or of poor people in general. To equate the selling of a kidney with being worse off is to beg the question once again.

It might seem more promising to cast this objection in terms of consent and coercion. No one should give up a kidney without freely consenting to do so. According to this objection, however, the people who sell their kidneys will be so desperate that their decision to sell will be neither rea-

sonable nor rational and therefore should not be counted as instances of free consent. Poverty will, in effect, coerce people into selling their kidneys, and it is clearly immoral to take advantage of others' poverty in this way. The fact that we can find people desperate enough for money to do something they would not otherwise do is no justification for allowing them to do it (Abouna et al. 1990, p. 166).

In this view, the amount of money involved is what vitiates true consent to sell a kidney.[14] This concern about money could come in two guises. One could claim that paying for kidneys will be coercively exploitative because the sellers will be paid too little money, or one could claim that paying for kidneys will be coercively exploitative because the sellers will be paid too much.

Those who hold that the payment will be too low point to the international black market, where payment for a kidney is often five thousand dollars or less (see Finkel 2001, pp. 28–31). Considering the surgery the sellers must undergo, this is taken to be a relative pittance, and certainly not enough to alter in any serious and long-lasting way the dire circumstances that force people to sell their kidneys in the first place. In this view, selling a kidney for five thousand dollars is so manifestly unreasonable that anyone who agrees to do it must be too desperate to give truly informed consent.

One way of responding to this concern is to mandate that kidney sellers receive a much higher sum. Some may object, however, that if the sum is too high, it will unfairly manipulate people into making irrational decisions. Large sums of money can tempt people to do what is wrong to do (Sells 1991, p. 20).[15]

Clearly, though, the concern that people will be paid too little or too much for a kidney is not fatal to the case for payment. There are two ways to view this element of the exploitation issue. First, there is a certain amount of money that is universally too much to pay for a kidney, and a certain amount that is too little. Second, there is no objective way to decide universally the question of the monetary value of a kidney. In the first case, a universally nonexploitative payment can be established by setting the fee so that sellers are reasonably compensated without being unduly tempted to abandon their principles. We are not arguing that kidney sales be left entirely up to an unregulated market, so we do not rule out the idea that the price could be adjusted to ensure fairness and consent. The second case holds that personal values and circumstances make it impossible to set a single dollar amount for a kidney that would be

reasonable and nonexploitative for all potential sellers of kidneys. Personal needs and values, regional economy, and numerous other factors will create wide variations in the payment level at which a person will choose to part with a kidney. The best one can do, such a position suggests, is to set the price of a kidney at a level that would persuade a sufficient number of sellers to relieve the kidney shortage (Barnett, Blair, and Kaserman 1992, pp. 373–74).

These solutions, however, will leave unsatisfied some of those who believe selling kidneys to be coercively exploitative. The decision to sell a kidney, these people will argue, is always unreasonable or irrational, no matter what the price, and so no one can ever truly and freely consent to do it. There is something crucially wrong with the decision to sell a kidney, regardless of whether one is paid one thousand dollars or one million. But to hold that it is irrational or unreasonable to sell a kidney no matter what the price is to revert once again to the view that selling a kidney is intrinsically wrong. It is asserting that kidney sales would be wrong even if practiced by people across the economic spectrum and abandoning the idea that what would make kidney sales wrong is that only poor people will sell. Now many people do believe that it would be wrong to allow kidney sales no matter who engages in them. As we have argued above, however, that belief requires justification, and until that justification is provided, the fact that poor people would be more likely than rich people to sell their kidneys does not on its own constitute a moral objection to the legalization of kidney sales.

Moreover, the good donor claim makes it very difficult to show that it will always be irrational or unreasonable to sell a kidney, no matter who does the selling. If it can be rational and reasonable for a person to decide to donate a kidney to a relative or to a stranger, it is difficult to imagine why it must always be irrational and unreasonable to sell a kidney. It seems plausible that a live seller can gain from the sale something intangible that is equal in value to what a live donor gains. Indeed, it is quite plausible that a living seller can gain exactly what a living donor gains—the satisfaction of saving a life, or of significantly improving the life prospects of another—*plus* a financial reward. If it is rational or reasonable for a living person to donate a kidney, then it seems that it would also be rational or reasonable for a living person to sell a kidney when the seller receives from the transaction the same benefit as the donor plus more.

Perhaps some opponents will continue to maintain that the mere fact that only the poor will sell is clear evidence of the coercively exploitative

nature of paying for kidneys, the considerations above notwithstanding. Such opponents might base their argument on the idea that an act that no wealthy person would ever agree to must have some essentially rebarbative quality that always makes it wrong to inflict on the poor. The opposition might, in other words, hold this principle: if the only people who will agree to *X* are poor, then *X* must be an activity to which no one can truly and freely consent.

The problem with this principle is that it is inconsistent with many of the jobs that employ a large percentage of our population. A wealthy person rarely will choose to clean toilets for a living, or to pick strawberries. But this does not prove that it is immoral to allow people to do these jobs. Of course we should be concerned about the wages and conditions of custodians and field hands. But the solution is to take measures to ensure fair wages and tolerable conditions, not to ban public toilets and commercially grown strawberries. Similarly, if we are concerned about the price and safety of kidney sales and removal, then the answer is not to ban them but to make them as fair and safe as possible.

Can the surgical procedure associated with kidney sales ever truly be safe? We think it can be. There are risks, to be sure, but they can be minimized so that the procedure will pose less of a threat to the seller than do many jobs and activities that our society currently allows. Live kidney donation is now not merely allowed but actively encouraged precisely because these risks can be minimized. In our proposal, potential sellers will be screened and monitored just as carefully as potential donors are, so that the risks to the former should be no greater than the risks to the latter.

Additional Flaws in the Exploitation Argument

In the matter of unequal appeal to rich and to poor, it may be instructive to compare our proposal for kidney sales to the current practice of payment for drug tests on human subjects.[16] Wealthy people sign up to be subjects of paid drug tests less often than do relatively poor people. The reason for this discrepancy is that drug tests are unpleasant, inconvenient, and not entirely free of risk. But our public policy dictates that as long as certain standards are met, it is morally acceptable to pay people to be subjects of drug tests. This policy is based on the belief that the benefits of drug testing are considerable, and that it is possible to implement standards that offer satisfactory protection to test subjects. The case of kid-

ney sales is analogous. The benefits are considerable, and proper regulation can ensure satisfactory protection to the kidney sellers.

Does this mean everyone should find it pleasant to think of more poor than rich people selling their kidneys? Not at all; this image will always be distasteful to many. But many people also find it distasteful that it is the poor who clean the toilets, pick the strawberries, and volunteer as paid research subjects. If this distaste does not justify outlawing public toilets, commercially grown strawberries, and payment to research subjects, then it will not, on its own, justify a ban on kidney sales.

Some might try to rescue the exploitation objection by drawing an analogy between payment for kidneys and buying one's way out of military service; they might claim that it is wrong to allow such payment in the same way that it is wrong to allow people to buy their way out of military service in times of a draft (see Meilaender 1999, pp. 43–44; Cohen 1999, pp. 291–92). The line of thought goes like this: military service is dangerous, but, because it serves a great purpose, it is sometimes necessary to ask people to do it. There is something repugnant, however, about the idea of rich people who have been drafted being able to buy their way out of military service by paying poor people to take their places. This is repugnant because it promotes a society in which the poor do the dangerous dirty work of fighting for the rich. So while military service is morally acceptable, payment for military service is morally unacceptable, as it offends our idea of the equal dignity of all citizens. Payment for a kidney, according to this objection, offends in just the same way. The case of military service shows, in this view, that even if donating a kidney is acceptable, and even if it is not irrational or unreasonable for people to accept money for their kidneys, allowing payment for kidneys is still unacceptable because it promotes a society in which the poor do all the dangerous dirty work, thus violating our idea of equal dignity.

On closer inspection, however, the analogy to military service does not damage the case for kidney payment but bolsters it. Currently, we pay people to serve in the military. We realize that military service is dangerous, but believe nonetheless that it is acceptable to have a force made up entirely of "paid volunteers." This state of affairs would seem to support the case for kidney payment because military service is an example in which we find it acceptable to pay people to participate in an activity that may involve serious risks. Although the volunteer military does not draw exclusively from those in poverty, the majority of enlistees (many of whom can expect to serve on the front lines) come from the lower end of the economic spectrum.

What is morally offensive about the military example is the idea that one could buy one's way out of *conscripted* military service. This moral offense would be analogous to payment for kidneys, however, only if society were justified in forcing people to transfer a kidney, and we were proposing to allow people to pay others to take their place in a compulsory kidney donation scheme. Needless to say, we are proposing nothing of the sort. The underlying point here is that the military example gains much of its intuitive power from the assumption that individuals called up in times of war *owe* their country military service. But we do not think any living person has a duty to sell a kidney, any more than we think any living person has a duty to take a certain kind of job or become the paid subject of a drug test. Once we recognize this difference between the two cases, the analogy between military service and kidney sales fails.

Slippery Slopes and Commodification

We shall now address another form the exploitation objection might take: slippery slope arguments. These hold that kidney sales ought not to be legalized because doing so would contribute to the degeneration of our society. Their legalization would, according to this argument, promote an "everything is for sale" mentality that would involve a commodifying conception of people that is incompatible with human flourishing (see Radin 1989, pp. 1879–1914). There are several ways of supporting this form of argument.

One way in which the slippery slope argument can be supported is by pointing to other medical procedures that are currently condemned but may appear more acceptable once kidney sales are legalized. One might argue, for instance, that if we allow living persons to sell kidneys today, we will be more likely to allow living persons to sell hearts in the future, and that the moral repugnance of heart sales is so great that we therefore ought not to allow kidney sales today. The problem with this version of the slippery slope argument is that it ignores the substantive moral difference between selling a kidney and selling a heart. As noted throughout this paper, the best medical evidence suggests that a person who gives up a kidney will not be significantly impaired, while a person who gives up his or her heart will die. Our justification for live kidney sales thus cannot be extended to live heart sales; the principle on which we have based our argument (the good donor claim) does not imply that a living person should be allowed to sell his or her heart (as a living person is not allowed to donate his or her heart). We see no reason to think, moreover, that the

legalization of kidney sales would affect societal attitudes in such a way that people eventually would find the prospect of living persons selling their hearts less shocking. After all, the chief motivation behind the legalization of kidney sales is the saving of lives. There is no warrant, therefore, for the claim that the legalization of kidney sales will pave the way for acceptance of living heart sales, which would end just as many lives as they would save.

A second way of supporting the slippery slope argument is to hold that the legalization of kidney sales will hasten the societal breakdown of generosity, love, and friendship (see Chadwick 1999, p. 137; Kass 1992, pp. 80–86). The worry here is that such legalization will transform an activity that is currently free of commercial aspects into mere commerce, thus promoting a mindset that views other people in more commercial, less generous, loving, and friendly ways. It is unclear, however, why we should think that the legalization of payment for kidneys would damage generous, loving, and friendly relationships. It is unlikely that legalization of payment for kidneys will affect the relationships between living people who freely donate their kidneys and the people to whom they donate. For, as we have noted, the majority of live kidney donations are between family members, and it is implausible to claim that legalizing payment for kidney transfer between strangers will erode the bonds of love and friendship between a brother and sister, or a parent and child. It is true that legalizing payment for kidneys will result in certain people—i.e., kidney sellers—engaging in a commercial activity in which they would not otherwise have engaged. But there is no reason to believe that those people will have fewer loving and friendly relationships than they did before; there is no reason to believe that sellers will care less for the people they already care for, or that the people who care for them now will care less for them in the future.

Those who advance the slippery slope argument might claim in response that their concern is not that the legalization of kidney sales will damage existing close loving relationships, but that it will alter the view we take of individuals with whom we are not intimately involved. The concern is that we will begin to take a more hardened view of strangers and non-intimates—that we will view them more as vessels containing spare parts for sale and less as persons with dignity. This concern, however, is so vague as to be virtually impossible to evaluate, and so does not outweigh the concrete benefit of saving lives promised by the legalization of payment for kidneys. It seems to us, moreover, that legalization of

payment for kidneys could lead people to develop a hardened attitude toward humanity in general only if they conflated an individual's kidney with the person as a whole. Although such a mistake is possible, we see no reason to think the population at large will make it.

Slippery slope advocates might try to fortify their position by pointing to the very analogies we have used to make the case for permitting kidney sales. We have maintained that it should be acceptable for poor people to sell their kidneys because it is currently acceptable for poor people to sell their blood, eggs, and sperm and to take jobs that are menial—e.g., cleaning toilets—and dangerous—e.g., fighting on the front lines. But our opponents might argue that we should not accept the fact that poor people have to do these things. According to this view, it is morally egregious that poor people have to do these things, a terrible aspect of our commodifying, exploitative society, and the legalization of payment for kidneys will only make matters worse. It will only push us further down the road of societal stratification and personal alienation.

This version of the slippery slope argument casts an exceedingly wide net. The crucial question is whether one is willing to take in everything it catches. The argument implies that fundamental elements of our capitalist system—elements that create the situation in which poor people end up doing things wealthier people do not—are worthy of moral condemnation. Although some people will embrace that implication, we suspect many opponents of kidney sales will not. We would be surprised if most of the opposition to kidney sales turned out to be grounded in Marxist political philosophy and if most people who oppose kidney sales embed their position within a general rejection of capitalism. Moreover, if kidney sales are wrong because, like the other indignities poor people have to suffer, they are a symptom of a fundamentally immoral capitalist system, then it seems the appropriate response is to work for a redistribution of wealth and a change in the means of production. From the anticapitalist perspective, opposing kidney sales (which could provide immediate financial opportunity for some poor people) while acquiescing to the rest of the system appears to be unhelpful at best and hypocritical at worst.

Furthermore, a *disanalogy* exists between payment for kidneys and many menial jobs that may strengthen the case for the former. Unlike many menial jobs, kidney sales are not intended to produce luxuries, increase convenience, or cater to whims. Kidney sales are intended to save lives, with minimal risk to the seller. The likely prospect of saving thousand of lives outweighs the highly speculative nightmare scenarios of various slippery slope arguments.

CONCLUSION

Undoubtedly, many people will continue to oppose kidney sales, regardless of the arguments we have offered. Many people will continue to find the sale of a kidney repugnant, a feeling that rational argumentation alone may be incapable of dislodging (Kass 1992, pp. 84–85). But we should not let this feeling of repugnance hold hostage our moral thinking. For a great many things we now hold in the highest esteem—including organ transplantation itself—occasioned strong repugnance in times past.

Still, it is there in our psyche and hard to shake—the sense that there is something unsavory, something sharply distasteful, about paying perfectly healthy individuals to submit to a major operation and to live thereafter without one of their internal organs. The mind flinches at the thought of what such individuals will endure for money. This reaction, however, may be the result of restricted vision, for there is another part of the story, another image that we must attend to before we can honestly say that we are responding to the matter in its entirety. The other part of the story is the people waiting for kidneys—the people who will live if they receive a kidney or die, or at least suffer needlessly, if they do not. A complete emotional response requires that we frame in our mind an image of these sick people, as well as of their families and friends, that is just as vivid as our image of the healthy kidney sellers.

When we complete the picture, we may find that our feelings of repugnance begin to soften, and perhaps to dissipate. Such imaginative exercises should not substitute for rational moral arguments, but they may help pave the way for a fair consideration of those arguments.

NOTES

1. We intentionally use the term "donor" to refer to those selling as well as those freely giving organs and tissues, in keeping with the common usage of the term with respect to other paid givers of biological materials, such as commercial blood donors, donors to sperm banks, and human egg donors.
2. This is an example of what Margaret Jane Radin (1987, p. 1919) has helpfully labeled "incomplete commodification."
3. In the early 1970s, Titmuss (1971) and Singer (1973) argued that the existence of financial incentives for blood products would decrease the amount of blood products overall, and some people might believe that the same argument can be extended to financial incentives for kidneys, leading to the conclusion that payment for kidneys will decrease the overall number of kidneys available for transplant. Singer and Titmuss's criticisms of payment

for blood products are consequentialist—they argue that such payment is wrong because it would reduce the amount of blood for people who needed it. We believe, first of all, that their consequentialist arguments against payment for blood products have turned out to be inconclusive at best—that the available evidence does not support the conclusion that payment for blood products has reduced blood supply in the United States. And we believe, secondly, that because live kidney donations are usually between family members, there is a significant difference between blood and kidneys that makes it illegitimate to transfer Titmuss and Singer's conclusions to the kidney debate. We do, however, remain open to the possibility that future evidence may vitiate our belief that payment for kidneys will increase supplies. For discussion of Titmuss and Singer in relation to kidney sales, see Campbell (1992, pp. 41–42); Cherry (2000, pp. 340–41); and Harvey (1999, p. 119).

4. Similar arguments occur in Radcliffe-Richards (1996, pp. 375–416); Nelson (1991, pp. 63–78); Tilney (1998, p. 1950); and Dworkin (1994, pp. 155–61). See also Brecher (1990, pp. 120–23).
5. As Laura Meckler (2001) reports, "Organ donations from the living jumped by 16 percent last year, the largest increase on record, as the waiting list for transplants grew much faster than donations from people who had died. More than 5,500 people gave a kidney or, less commonly, a piece of the liver, accounting for nearly half the nation's donors in 2000, said the Department of Health and Human Services. . . . The number of living donors has been growing more quickly than the number of cadaveric donors for a decade, but the gap was particularly striking in 2000. While the number of living donors jumped 16.5 percent, donations from the dead edged up by just 2.7 percent. At this rate, living donors will outnumber cadaveric donors within a year or two."
6. The New England Medical Center currently has a program to encourage organ donation. As Jay Lindsay (2001) reports, "Susan Stephens helped her 13-year-old son get a kidney transplant by giving up one of her own—to a stranger in Greece. A new kidney exchange program at the New England Medical Center allowed Stephens to donate her kidney, which wasn't a match for her son. In exchange, her son, Corey, was moved to the top of the kidney waiting list. Corey received his new kidney last month, after his mother's donation reduced a possible 18-month wait to a few weeks. Meanwhile, Stephens' kidney ended six years on a dialysis machine for Evangelos Natsinas, 36, of the Greek village Palamas. Doctors say the program will increase the critically small organ donor pool, while allowing willing donors to help loved

ones, regardless of whether their organs match. So far, the program only includes kidneys."

7. As we point out in note 3, some people (Titmuss, Singer, and others) have opposed commercial blood banks. Does that opposition constitute a threat to our position? It depends upon the reasons for the opposition. If one's reasons for opposing such blood banks are (like Singer's) consequentialist—i.e., if the only reason one has for opposing blood banks is that one thinks they will lead to lower blood supplies—then one is committed to opposing the legalization of kidney sales only if legalization will lead to fewer kidneys for transplant. But this purely consequentialist reasoning may also commit one to *supporting* the legalization of kidney sales if legalization will lead to more kidneys for transplant (although the pure consequentialist would consider other effects of legalization as well; we address some of these other possible effects in our discussion of exploitation, slippery slopes, and commodification). If one's reasons for opposing commercial blood banks are nonconsequentialist—if one thinks there is something wrong with blood banks distinct from how they affect the blood supply—then those reasons have to be defended and evaluated on their own merits. (We evaluate the Kantian class of nonconsequentialist reasons in our discussion of the objection that selling kidneys is intrinsically wrong.)
8. As we note later in the article, the difference between the motivations of a donor and a seller may not be as clear and simple as opponents of kidney sales suggest, for a donor could have selfish motives and a seller could have altruistic ones. But even if we grant for the moment that all donors will be altruistic and all sellers will be selfish, the argument presented here still seems to constitute a strong initial case for kidney sales.
9. As Andrews (1996, p. 32; in part citing Caplan (1985)) writes, "Physicians have adopted an odd view of risks to organ donors. Transplants surgeons traditionally have maintained that removing a kidney from a live donor presents minimal health risks. 'However,' Arthur Caplan points out, 'when the proposal was made to buy and sell kidneys what had historically been deemed "minimal risks" suddenly escalated into intolerable dangers when profit became an obvious motive?'" Or, as Tilney (1998, p. 1950) puts it, "The risk involved in nephrectomy is not in itself high, and most people regard it as acceptable for living related donors. . . . [T]he exchange of money cannot in itself turn an acceptable risk into an unacceptable one . . . ."
10. Some might try to counter the initial argument for kidney sales by employing an analogy to prostitution. Prostitution, they may say, consists of an act that is morally acceptable when money is not involved but morally unacceptable

when money is involved. One can, of course, hold that prostitution is morally unacceptable while also holding that many other acts that involve money are morally acceptable. The example of prostitution, then, shows that the fact that a particular activity, *A*, is acceptable when money is not involved, and the fact that other activities are acceptable when money is involved, do not together imply that activity A is acceptable when money is involved. But if the prostitution analogy is going to bolster opposition to payment for kidneys, we have to know first of all why prostitution is wrong. Now there are two ways in which prostitution could be wrong: because it has unacceptable consequences, or because it is wrong in itself. If prostitution is wrong because of its consequences, the analogy between prostitution and kidney sales will support opposition to the latter only if it can be shown that kidney sales have unacceptable consequences similar to those of prostitution. We will address consequentialist arguments of this sort later in the article in the section on exploitation and commodification. What of the other possibility, that prostitution is wrong in itself, distinct from its consequences? Does this argument establish that payment for kidneys is wrong? On its own, it does not. For the bare claim that prostitution is intrinsically wrong does not show that payment for kidneys is wrong as well. What we need is an explanation of the wrongness of prostitution that enables us to draw an analogy to payment for kidneys. It is not enough for opponents of kidney sales simply to point to the prohibition on prostitution; they also must show that the features of prostitution that make it wrong are shared by kidney sales. They have not done this, to our knowledge. In addition to prostitution, we have been asked at various points about a number of other things that are legal to give but not to sell. One example is selling oneself into slavery; we explain the crucial disanalogy between selling a kidney and selling oneself into slavery in our discussion of the Kantian objection below. Two other examples are buying one's way out of the military draft and selling one's body for medical experiments, both of which we discuss below in our section on the additional flaws in the exploitation argument. Our general rejoinder to all these putative counterexamples is this: our argument does not depend on the absolutist claim that everything that it is legal to give should also be legal to sell. Our view, rather, is that the fact that something is legal to give constitutes *prima facie* grounds for thinking that it should be legal to sell—that the burden of proof falls on those who would argue that something should be legal to *give* but not legal to *sell*. In the parts of this paper that follow our *prima facie* case, we address attempts to meet that burden of proof with regard to kidney transfer and try to explain why we think those attempts fail.

11. Kant himself seems to have been opposed to the selling of any body part. Even the selling of one's hair, he says, "is not entirely free from blame" (Kant 1983, p. 84). As we argue in this section, however, it is difficult to see how such opposition follows from Kant's fundamental moral principle of respect for humanity. It is worth noting, as well, that the circumstances of kidney transplantation could hardly have been anticipated by Kant, and so one must proceed with great caution when trying to draw moral conclusions about kidney transplantation (not simply from Kant's fundamental moral principles but also) from his specific judgments of practices particular to his day, such as his condemnation of one's submitting "oneself to castration in order to gain an easier livelihood as a singer" (Kant 1983, p. 84).
12. Many people will have religious objections to the selling of kidneys. But religious belief (or the lack thereof) is a private matter, left up to each individual, and not something that should determine law and public policy.
13. This kind of argument is made by Morelli (1999, p. 323); Chadwick (1989, pp. 137–38); Essig (1993, p. 65); and Sells (1993). This kind of argument is criticized by Andrews (1986); Cherry (2000); Harvey (1990); and Radcliffe-Richards (1996, pp. 378–84).
14. For criticism of this claim, see Radcliffe-Richards (1986, pp. 380–84); Cherry (2000, pp. 345–49); Tadd (1991, p. 97); and Nelson (1991, p. 74–75).
15. Faden and Beauchamp (1986, p. 340) criticize the idea that an offer can be coercive because it is irresistibly attractive. We agree with Faden and Beauchamp's view that the prospect of financial reward cannot in and of itself constitute coercion.
16. For a discussion of this analogy, see Tadd (1991, pp. 97).

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