Autonomy, Constraining Options, and Organ Sales

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ABSTRACT Although there continues to be a chronic shortage of transplant organs the suggestion that we should try to alleviate it through allowing a current market in them continues to be morally condemned, usually on the grounds that such a market would undermine the autonomy of those who would participate in it as vendors. Against this objection Gerald Dworkin has argued that such markets would enhance the autonomy of the vendors through providing them with more options, thus enabling them to exercise a greater degree of control over their bodies. Paul Hughes and T. L. Zutlevics have recently criticized Dworkin’s argument, arguing that the option to sell an organ is unusual in that it is an autonomy-undermining “constraining option” whose presence in a person’s choice set is likely to undermine her autonomy rather than enhance it. I argue that although Hughes’ and Zutlevics’ arguments are both innovative and persuasive they are seriously flawed — and that allowing a market in human organs is more likely to enhance vendor autonomy than diminish it. Thus, given that autonomy is the preeminent value in contemporary medical ethics this provides a strong prima facie case for recognizing the moral legitimacy of such markets.

Although the recent development of immunosuppressive drugs such as cyclosporin-A and OKT3 have greatly increased the success rate of organ transplantations, there is still a chronic shortage of suitable organs available for transplantation [1]. Although various remedies for this shortage have been proposed [2], the suggestion that it should be alleviated through legally allowing a current market in organs to exist has received almost universal moral condemnation [3]. Much of this condemnation is based on the view that allowing such a current market will undermine the autonomy of those who would participate in it as vendors [4]. Against this Gerald Dworkin has recently argued that rather than undermining the autonomy of those who would participate in them as vendors such markets will actually enhance it, for to allow persons to sell their organs will enable them to exercise a greater degree of control over their bodies [5].

Dworkin’s arguments in favour of allowing a current market in human organs have become the most prominent expression of this position within the philosophical literature — although this is no doubt partly owed to the scarcity of the defenders of this view. Since this is so, Dworkin’s arguments have attracted considerable attention from those opposed to allowing current markets in human organs. Of particular note are two recent and highly innovative criticisms of his position that have been developed by Paul Hughes and T. L. Zutlevics [6]. Hughes and Zutlevics both agree that Dworkin’s claim that providing a person with additional options as to how she can control her life will typically enhance her autonomy is correct. Despite this, they argue that the option to sell an organ is unusual in that it is likely to be an autonomy-undermining “constraining option.” Hughes argues that the choice of such an option is likely to undermine the...
autonomy of the individual, while Zutlevics argues that allowing the poor to have this option is likely to reduce the possibility that their autonomy will be promoted in the future through the provision of aid [7]. Both of these arguments are highly persuasive — but, as I will argue here, both are seriously flawed.

However, the argument in this paper is not entirely negative. In arguing that Hughes’ and Zutlevics’ criticisms of Dworkin’s arguments are mistaken, I will show that none of the most persuasive objections to a current market in organs that are based on the value of autonomy are successful. Instead, those arguments (such as Dworkin’s) that favour allowing a current market in human organs on the grounds that respect for autonomy requires that such markets be allowed should hold sway. And this is important, for insofar as autonomy is still the preeminent value in contemporary medical ethics the success of these arguments provides a strong prima facie case for recognizing the moral legitimacy of current markets in human organs [8].

Preliminary Remarks

Before I move on to consider the arguments of Zutlevics and Hughes it should be noted that the arguments in this paper should not be taken to support the moral permissibility of a current market in all human organs. Instead, they should only be taken to support a current market in those bodily parts that are either renewable (such as blood, plasma, semen and ova) or those solid organs (such as kidneys) whose loss will not affect the vendor’s ability to live as he or she did prior to the sale. This narrowing of the focus of these arguments is not, however, peculiar to this contribution to the debate over the moral permissibility of organ sales. This is because in all of the autonomy-based arguments that this paper will consider it is implicitly assumed that the sale of an organ will not itself result in the compromising of the vendor’s autonomy, but, instead, that the vendors will at least have the potential to be as autonomous after the sale as they were before it. (Thus, when these arguments refer to “organs” they should be understood to refer to those bodily parts whose loss will not itself compromise the vendor’s autonomy.) Since this is so, then, the autonomy-based arguments of this paper should not be generalized to support current markets in either organs (such as hearts) or certain bodily appendages (such as hands) whose sale would itself adversely affect the future autonomy of the vendor.

Dworkin’s Case for Organ Sales — and the First Objections to it

In “Markets and Morals: The Case for Organ Sales” Gerald Dworkin provides one of the very few positive arguments for the moral permissibility of a current market in human organs. Dworkin notes that it is considered morally acceptable for a person noncommercially to donate a kidney and to sell blood, semen, ova and hair. The moral legitimacy of these practices, he claims, indicates that “we respect the bodily autonomy of individuals,” where “bodily autonomy” is understood as persons’ “ability to make choices about how their body is to be treated by others” [9]. Dworkin also notes that allowing persons to engage in market transactions “is one way of recognizing their sphere of control” with respect to the goods that they are trading. So, because it is accepted

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that persons should be allowed to exercise control over their bodies, they should be allowed to sell their organs. Allowing a current market in human organs, then, will enhance personal autonomy through removing a prohibition that currently restricts persons' control over their own bodies [10].

Dworkin's argument rests on the premise that a market transaction in which one sells one of one's organs is a voluntary transaction, one that the vendor is autonomous with respect to. Dworkin recognizes that this claim is precisely that which is standardly attacked by those opposed to allowing such markets on the grounds that they will allow the autonomy of the vendors to be diminished, and he attempts to rebut their arguments by demonstrating that they have counterintuitive implications. Those opposed to organ sales point out that the vendors would (typically) be forced to sell out of economic necessity. They then note that it is generally accepted that a person who is forced to perform an action out of necessity will suffer from a diminution in her autonomy with respect to that action [11]. If these two (widely held views) are correct, then those who are forced to sell their organs out of economic necessity will suffer from a diminution in their autonomy with respect to their vending action [12]. In response to this standard objection to allowing a current market in human organs Dworkin argues that if the poor should be prohibited from selling their organs for this reason then they should also be prohibited from joining the army, engaging in hazardous occupations such as high-steel construction, or being paid subjects in medical experiments, since these decisions are also often made out of economic necessity, and thus should also be considered to exhibit diminished autonomy. Yet to prohibit the poor from engaging in such activities, Dworkin claims, would be considered morally impermissible because such prohibitions would be “paternalist in the extreme.” Since this is so, he concludes, by parity of reasoning the standard objection to the moral permissibility of allowing a current market in human organs has impermissibly paternalistic implications — and so it should be rejected [13].

Yet although Dworkin’s response to this “objection from exploitation” appears to be a plausible defence of the moral permissibility of a free market in human organs this appearance is misleading. This is because the force of this response rests on two implicit claims; that the only way to protect the poor from exploitation is to prohibit them from working in those occupations that are deemed exploitative, and that such prohibitions are impermissibly paternalist [14]. The first of these claims is false, for it is not true that the only possible way one might protect the poor from exploitation is to prohibit them from engaging in hazardous activities such as high-steel construction or kidney vending. Instead, one might protect the poor from exploitation by requiring that all employers (and traders in human organs) “ensure, so far as is reasonably practicable, the health, safety and welfare at work of all . . . [their] . . . employees” [15]. Thus, rather than having to prohibit the poor from selling their organs to protect them from exploitation one need only regulate the way in this market operates. Furthermore, it is not clear that preventing the poor from working in unnecessarily hazardous conditions through subjecting employers (and organ traders) to regulatory legislation (such as the Health and Safety at Work Act) would be impermissibly paternalist. This is because in imposing such regulation one is not adversely affecting either the quantity of the number of options that the poor possess (i.e., they do not have any fewer options than they did prior to its imposition) nor the quality of the options that they possess [16]. (Indeed, one is improving the quality of their option set by replacing a less attractive option
— working in hazardous conditions — with a more attractive one — working in safer conditions). Thus, since such regulation is likely to serve to increase the well-being of the poor without any decrease in their autonomy its imposition will be unobjectionable to those who are concerned with the protection of the autonomy of the poor.

However, even though Dworkin’s response to the objection from exploitation fails as a defence of a free current market in human organs a version of it can be used successfully to defend a regulated current market in human organs. This is because just as it seems to be impermissibly paternalistic to prohibit the poor from engaging in hazardous activities such as high-steel construction when they are protected from unnecessary hazards through legislative regulation, so too does it seem impermissibly paternalistic to prohibit them from participating as vendors in a similarly regulated current market for organs. And one can accept that this prohibition would be impermissibly paternalistic without having to accept either of the two claims that underlie Dworkin’s original argument.

Dworkin’s argument is thus defensible when it is understood as an argument in favour of a regulated current market in human organs. Moreover, when understood in this way it is immune to Zutlevics’ first criticism of it. In developing this criticism Zutlevics points out that Dworkin’s response to the objection from exploitation rests on the intuition “that most people would be reluctant to deny the poor the opportunity to join the army, to engage in hazardous occupations, or to receive financial remuneration for participation in medical experiments” [17]. She then notes that most people would only agree that the poor should be allowed to engage in the hazardous activities that Dworkin lists if two conditions are met: that their employers did not exploit their financial necessity to expose them to levels of risk that the non-poor were not exposed to, and that they could secure certain benefits and enhanced social standing from participation in these activities. Since this is so, Zutlevics argues, deciding whether a person’s financially necessitated choice to perform an action is one that she is autonomous with respect to does not merely depend upon the risk associated with the chosen activity, as Dworkin holds. Instead, it also depends on whether the person choosing it could expect to secure benefits from it that would also be attractive to the non-poor. Thus, if the sale of an organ were an option that did not meet these two additional conditions (and so was an option that was only attractive to the desperate poor) it would be disanalogous to the other hazardous activities that Dworkin considers. This is because, Zutlevics argues, if the option of selling an organ were attractive only to the desperate poor then unlike the other activities Dworkin considers the only persons who would choose this option would be those who were economically forced to do so, and so who would not be autonomous with respect to this choice. And since this is so, she concludes, Dworkin’s attempt to respond to the objection from exploitation fails, because this objection does not have the impermissibly paternalistic implications that he is concerned about.

If Dworkin’s response to the argument from exploitation were best understood as favouring a free current market in human organs then Zutlevics’ objection here might be sound. However, as was argued above it is instead best understood as favouring a regulated current market in human organs. Since this is so, then even if Zutlevics’ “guess” that most people would only allow the poor to engage in hazardous occupations such as military duty or high-steel construction on the conditions that they received acceptable financial and social compensation is correct, this does not undermine...
Dworkin’s response to the objection from exploitation. This is because all that can be inferred from Zutlevics’ guess is that for it to be as morally acceptable for the poor to sell their organs as it is for them to engage in the other hazardous activities that Dworkin lists the market for human organs must operate in such a way that the compensation received by the vendors is comparable to that which they would receive were they to engage in these other hazardous activities. Since this is so, then, if the vendors in a current market for human organs receive enough compensation from the sale of an organ for this to be an option that is attractive not only to the desperate poor Dworkin’s response to the objection from exploitation will hold. And while this level of compensation might not be forthcoming in an unregulated free current market for human organs (although, of course, it might) steps could be taken to ensure that it would be forthcoming in a regulated trade in human organs. (One might, for example, establish a monopsonistic market in which there is only one buyer, and that buyer pays an acceptable level of compensation for the organs it purchases) [18]. And a regulated market is, of course, precisely the sort of market that Dworkin’s autonomy-based arguments best support. Rather than supplying the basis for an objection to Dworkin’s response to the objection from exploitation, then, Zutlevics’ “guess” actually serves to support his position.

Is the Option to Sell an Organ an Autonomy-Undermining Constraining Option for the Individual Who Chooses it?

So far, then, it appears that Dworkin’s autonomy-based arguments in favour of allowing persons to sell their organs in a current market are successful. However, to accept the moral permissibility of such markets would be premature, for Paul Hughes has developed a highly persuasive (and highly original) objection to Dworkin’s position. Hughes’ argument is based on the recognition that merely providing a person with an addition to his set of options need not enhance his autonomy, for the addition of certain options might instead compromise it. To illustrate this, Hughes uses the example of “the legal option of refraining from pressing charges against one’s assailant” [19]. Although the possession of such an option is typically held to enhance the control that its possessors have over their lives Hughes notes that out of fear of their assailants some persons refuse to press charges; a refusal that condemns them to the possibility of yet more abuse at the hands of the original perpetrators. The option not to press charges is thus a “constraining option.” This is because it serves to lock some of those who choose it into a continued cycle of autonomy-undermining abuse; a cycle that could have been broken (and their autonomy restored) had this option not been open to them [20].

Having thus established that the possession of certain “constraining options” might serve to undermine a person’s autonomy rather than enhancing it, Hughes draws on a neo-Marxist account of exploitation to argue that the option to sell one’s organs is just such a constraining option. On this account of exploitation a person is exploited when her background set of options is constricted in such a way as to force her to perform the action that her exploiter requires of her [21], (such as, for example, to work in his factory — or to sell him one of her kidneys.) If a person is in a situation where she is faced with such a constricted range of options, Hughes argues, then anything that
“presupposes and/or reinforces” this situation for her will perpetuate the undermining of her autonomy. So, if a person is provided with an addition to her choice-set that, if chosen, will result in her continuing to remain in her present autonomy-undermining circumstances, such an option will not be one whose possession necessarily serves to enhance her autonomy. Instead, her possession of this option might only serve to perpetuate its undermining.

In order to show that the option to sell one’s organs in a current market is an autonomy-undermining constraining option of this sort Hughes notes that it will typically be the poor who will be the vendors in such a market. From this, Hughes infers that for a current market in human organs to exist “it is necessary that there be poor people and that we allow them to participate in such a market” [22]. Since this is so, Hughes concludes that the introduction of a current market in human organs presupposes that some persons live in autonomy-undermining economic circumstances. And if a system that “presupposes and/or reinforces” a person’s presence within an autonomy-undermining situation perpetuates the undermining of her autonomy, then the introduction of a current market for human organs will only serve to undermine further the autonomy of potential vendors, rather than enhance it.

Furthermore, one of Zutlevics’ arguments also suggests that allowing current markets in human organs might serve to reinforce the position of poor individuals in their autonomy-undermining economic circumstances, for there is “evidence which suggests that poverty is not significantly alleviated by selling organs” [23]. In support of this claim Zutlevics cites Sanjay Kumar, who has noted that the Madras’ suburban slum colony Villivakkam is so full of poor persons who have sold a kidney that it has become internationally known as “kidney-vakkam” [24]. Rather than helping the poor escape from their autonomy-undermining economic circumstances, then, allowing them to sell their organs might only serve to enable them to continue to live in poverty, perhaps to sell other non-vital body parts in future. And, since this is so, a current market in human organs might only serve to reinforce the continued existence of the poor in their autonomy-undermining economic conditions.

Responses to Hughes

It is indeed plausible to hold that if a system presupposes and/or reinforces an autonomy-undermining situation, then that system should also be regarded as being autonomy-undermining. However, this neo-Marxist claim cannot be used to object to the introduction of a current market for human organs. This is because such a market neither presupposes nor reinforces the autonomy-undermining situation of the poor in the way that is needed for it to be an autonomy-undermining system.

To show this one must first distinguish between two senses in which the introduction of a system B “presupposes” the existence of a situation A. In the first sense a system B “presupposes” the existence of a situation A if B is introduced in order to alleviate A, such that some time after B is introduced A might cease to exist. In the second sense a system B “presupposes” the existence of a situation A if B is introduced in the belief that A exists, and A and B are mutually dependent and will continue to coexist [25]. It is clear that Hughes cannot be using the first sense of “presuppose” in his argument for he denies that the introduction of a current market for human organs
would alleviate the autonomy-undermining economic situation of the poor. Instead, he is using the second sense of “presuppose,” such that a current market for human organs presupposes the autonomy-undermining situation of the poor as it is introduced in the belief that there are poor persons who live in such a situation, and that the introduction of this market both depends on their being in such a situation and contributes to their continued existence within it. However, neither of these two aspects of the second sense of what it is for a system B to presuppose the existence of a situation A holds true for the introduction of a current market into the autonomy-undermining economic situation of the poor. Since this is so, the introduction of such a market does not presuppose the existence of an autonomy-undermining situation in the sense that Hughes requires to show that it is itself autonomy-undermining. Firstly, it is not necessary for the introduction of such a market that are “poor people and that we allow them to participate” in it. This is because all the proponents of such a market need presuppose is that some persons will be willing to purchase organs for transplantation, that others (of any economic standing) will be willing to sell them, and that the vendor and the purchaser will be able to agree on a price. Of course, no doubt almost all the vendors in such a market will be drawn from the ranks of the desperate poor, and so more organs would be sold if the poor did exist and were allowed to participate in such a market. But this point concerns the differential volume of trade that would take place in a current market for human organs with the participation of the poor, rather than the feasibility of such a market itself. In addition to this, the introduction of such a market does not meet the second condition needed for it to “presuppose” the autonomy-undermining situation of the poor in the second sense of “presuppose” outlined above, for it will not contribute to the continued existence of the autonomy-undermining economic situation of the poor.

To show that the introduction of a current market for human organs does not meet this second condition for it to presuppose (in the appropriate sense) the autonomy-undermining situation of the poor is, of course, to show that the introduction of such a market does not reinforce the autonomy-undermining situation of the poor. This being so, then, once it has been shown that the introduction of a current market for human organs does not reinforce the autonomy-undermining situation of the poor it will have been shown that the introduction of such a market meets neither of the conditions required for it to presuppose the autonomy-undermining situation of the poor, nor does it reinforce this situation. And, since this is so, Hughes cannot hold that the option to sell an organ is a constraining option, for the introduction of a market for human organs will neither presuppose nor reinforce the autonomy-undermining situation of the poor.

It was noted above that Zutlevics’ observation, that although the poor of Villavakkam could sell their kidneys they were still unable to escape their autonomy-undermining economic situation, could be used to argue that allowing them this option serves to reinforce their impoverished situation. However, that the typical organ vendor might continue to suffer from her autonomy-undermining economic impoverishment if she were to sell an organ provides scant grounds for objecting to such sales on the basis of respect for autonomy. This is because prohibiting the poor from selling their organs will be to prohibit them from pursuing the only option that they have of securing a small sum of capital. Thus, even if this sum is not enough for them to extricate themselves from their autonomy-undermining impoverishment the alternatives for such
persons are, at worst, the elimination of their enjoyment of their autonomy through death, and, at best, lives in which they have even less opportunity to exercise her autonomy that they would have possessed had they been allowed to sell an organ. Thus, even if such vendors are unable to escape from their poverty their autonomy will be enhanced, not diminished, through their vending actions.

Hughes, however, might object that his understanding of what it is for a system to “reinforce” a person’s presence in her autonomy-undermining situation differs from that which underlies this argument drawn from Zutlevics’ observation. Instead of understanding a system as reinforcing a person’s presence in her autonomy-undermining situation if it is one that merely enables her to continue to exist in it, Hughes’ understanding of what it is for a system to “reinforce” a person’s presence in her autonomy-undermining economic circumstances seems to be that the situation of the person concerned vis-à-vis her autonomy would be more likely to improve were this system not in place. Yet even with this understanding of what it is for a system to “reinforce” a person’s presence in place the option of selling a kidney cannot be considered a constraining option. This is because it is not the case that allowing a person to sell an organ will make it less likely that she will secure a situation that is more conducive to the exercise of her autonomy. Indeed, rather than reinforcing the economic status quo allowing a current market in human organs might in some cases actually subvert it. This is because allowing such a market might provide the poor with the opportunity to acquire amounts of capital that they would otherwise not have access to, the possession of which might allow them to finally escape their economic constraints. For example, in the Philippines vendors consider the sale of an organ to be an important way to raise money to start up a new business, while a similar practice exists also in India [26]. Instead of reinforcing the status quo, then, allowing a current market in human organs might enable the poor to transcend it [27].

Organ Sales, Aid, and Group-Affecting Constraining Options

In arguing that the possession of the option to sell one’s organs does not serve to reinforce one’s presence in one’s current economic circumstances it was claimed that for some persons this option would be the best that was available to them, and so its removal from their choice-set would make them worse off than they were with it [28]. Zutlevics, however, argues that this claim is false, contending instead that the best option that these persons have is to be the recipients of aid [29]. Zutlevics argues that it is important to recognize this, for once one does so one will also see how it is that allowing the poor to sell their organs in a current market will only be to provide them with an option that is a constraining option for them as a group.

Zutlevics is correct to note that recognizing that the best option that the poor have is to be the recipients of aid is the key to developing the argument that providing the poor with the option to sell their organs is to provide them with an option that might be a constraining option for them as a group. However, she is wrong to argue that this recognition undermines Dworkin’s view. This is because this aid-based anti-market argument is caught on the horns of a dilemma. On one hand, if the poor do not receive sufficient aid to allow them to escape from their poverty then the proponents of current markets in human organs are right to hold that the best option that they actually have...
might be to sell an organ. On the other hand, if sufficient aid is provided to allow the poor to escape the economic deprivation that would otherwise drive them to sell an organ it is unlikely that persons would wish to participate as vendors in a current market for human organs, and so there would be no need to prohibit this. (And, of course, it would be “paternalist in the extreme” to prohibit those few persons who for reasons of their own wish to sell their organs from doing so.) Since this is so, then, it appears that a current market for human organs should be allowed whether or not aid is forthcoming.

Zutlevics, however, has a way out of this dilemma. Zutlevics argues that allowing the poor of impoverished countries to participate as vendors in a current market in human organs now might lead to less aid being forthcoming to them in the future. This might be so, she argues, since if a current market in human organs is allowed it is likely that there will be a flow of organs from impoverished non-Western countries to the affluent West. And this, she continues, will provide a reason for the Western countries not to provide aid to the impoverished countries from which they are purchasing their transplant organs, for the provision of such aid would rescue the poor of the impoverished countries from the economic desperation that leads them to sell their organs to the West. Thus, if a current market in human organs is allowed it will provide a disincentive for the affluent West to give aid to the impoverished countries from which it purchases its organs. So, Zutlevics concludes, a current market for human organs should be prohibited on the grounds that allowing the poor of non-Western countries to sell their organs to the West is likely to reinforce their presence in their autonomy-undermining economic situation through providing the West with a disincentive to supply them with the aid that they require to escape this.

Zutlevics’ argument is both highly insightful and very persuasive. As Hughes does, Zutlevics argues that the option to sell one’s organs is not an autonomy-enhancing option, as Dworkin claims, but, instead, is an autonomy-undermining constraining option. Unlike Hughes, however, Zutlevics does not claim that the option to sell an organ is likely to be an autonomy-undermining constraining option for the person who chooses it. Instead, she argues that the possession by the poor of the option to sell their organs is likely to undermine the overall degree of autonomy that is enjoyed by the poor as a group — even if such sales might enhance the autonomy of the vendors themselves. Moreover, unlike Hughes Zutlevics is able to provide an account of why allowing such sales will reinforce the autonomy-undermining social conditions in which the poor find themselves.

Before I move on to criticize Zutlevics’ argument I should note that it is not an argument against allowing current markets in human organs per se, but only an argument against any market whose existence might provide a reason for the affluent to curtail their provision of aid to the needy. Since this is so, then, this argument does not oppose a current market in human organs in which the poor are allowed only to sell to their fellow poor, nor does it oppose a market in which only the non-impoverished are allowed to sell their organs.

Recognition of this last point leads directly to the first criticism of Zutlevics’ argument. In “Markets and Morals” Dworkin explicitly addressed arguments opposed to allowing a current market in human organs that, like Zutlevics’, focused on the possibility that such markets might lead to the exploitation of the poor. Dworkin rhetorically asks whether one would be more or less inclined to favour organ sales if individuals whose average income was less than 80% of median family income were prohibited
from selling their organs — a move that would have the effect of removing persons in the lower 40% of income distribution from the market [30]. Here, Dworkin is attempting to draw out the intuition that such a move would be considered to be highly unjust, prohibiting as it would those who would be most likely to benefit from the sale of their organs from doing so.

Zutlevics, however, has a ready response to this objection. Dworkin’s rhetorical objection to anti-market arguments such as hers is based on the view that restricting the class of vendors to exclude the poor is of no benefit to them. As Zutlevics has persuasively argued, however, this might not be true, for such a restriction might serve to eliminate one reason that the affluent might have to refuse to provide aid to the poor. Rather than focusing on the short-term disadvantages that such a restriction might impose upon those poor individuals who would have otherwise sold their organs, then, one should instead focus on the long-term benefits that it might have for the poor as a class — and once this is done such a restriction might not seem to be as unjust as Dworkin holds it to be.

Provided that one accepts Zutlevics’ consequentialist approach to moral reasoning, then, her argument is defensible against Dworkin’s objection. However, it is not so readily defended against the challenge that its basic premise is mistaken. Zutlevics holds that the possibility that autonomy-enhancing aid to the impoverished countries of the world would decrease if current markets in human organs were allowed is high enough to justify their prohibition. This premise of Zutlevics’ argument is, of course, a speculative one — and there are several factors that undermine its plausibility. Firstly, the affluent countries of the West might wish the poorer countries of the world to attain wealth and financial stability to provide additional markets for Western goods. Furthermore, they might wish to aid them to avoid the possible political instability which their economic deprivation might generate, and which might subsequently adversely affect Western interests in the international arena. Similarly (and especially in the wake of the September 11th terrorist attacks on New York City and Washington, D.C.) Western countries might be motivated to provide aid to developing countries simply to dampen anti-Western sentiment.

Of course, these considerations are, like Zutlevics’ own premise, speculative, and so although recognizing them militates against a too-ready acceptance of Zutlevics’ premise it does not decisively refute it. However, even though these considerations are speculative there is evidence to suggest that Western countries would be unlikely to refuse to provide aid to impoverished countries in order to maintain them as suppliers of organs for transplant into Western citizens. As G. V. Tadd has noted, when it became public knowledge that Turkish nationals were selling their kidneys for transplantation to persons in Britain the resulting public outcry was largely responsible for the passing of the Human Organ Transplants Act of 1989 prohibiting this trade [31]. Rather than forming their policies concerning foreign aid to ensure the continuance of an international trade in human organs, then, it seems that Western countries will actually move to prohibit it, with the desire to avoid the opprobrium of both their own citizens and the international community heavily outweighing the desire to secure a supply of cheap transplant organs for a subset of their citizens.

Given both the speculative considerations outlined above and the British government’s actual reaction to the public opposition to the international trade in human organs there are good reasons to reject Zutlevics’ claim that allowing such a trade would encourage
the Western countries to withhold aid from those impoverished countries who would become net suppliers of cheap transplant organs. And since this claim provided the basic premise for her argument that allowing the poor to sell their organs would only provide them with a constraining option that, if chosen, would be likely to diminish the degree of autonomy that they enjoyed as a group, these considerations provide good reasons for rejecting her argument outright.

Conclusion

I have not provided in this paper any arguments for the moral acceptability of a current market for human organs — except indirectly, insofar as I have defended Dworkin’s autonomy-based arguments for the permissibility of such markets against the criticisms of Hughes and Zutlevics. However, showing that Dworkin’s autonomy-based arguments in favour of allowing a current market in human organs can be defended against these criticisms is important, for this shows that if one genuinely values personal autonomy one should favour such markets rather than oppose them, even if one believes that the poor should be provided with aid. Since this is so, then, given that personal autonomy is the preeminent value in contemporary medical ethics the possibility of using a current market in human organs to procure organs for transplantation should be welcomed by medical ethicists, rather than condemned by them [32] [33].

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NOTES

[1] As of August 23rd 2002 there was a total of 5,682 patients on the United Kingdom’s national transplant waiting list, with only 1,347 transplants having been performed. At the end of December, 2001 there was a total of 6,842 patients on the waiting list with 2,717 solid organ transplants having been performed that year; in December 2000 there was a total of 6,779 patients on the waiting list with 2,708 solid organ transplants having been performed that year. Statistics prepared by UK Transplant Support Service Authority (UKTSSA) from the National Transplant Database maintained on behalf of the UK transplant community.

[2] Such measures include publicity campaigns to encourage people to carry donor cards, facilitating registration on the NHS Organ Donor Register, using organs from non-heartbeating donors and initiating a system of presumed consent on which it is assumed that the individual wishes to be a donor unless he or she had previously registered an objection. These measures are outlined in Michael Wilks, Robin Gill, Evan Harris, Jeremy Wright (2000) Organ Donation in the 21st Century: Time for a consolidated approach (London, British Medical Association.) See also Arthur Caplan and Daniel H. Coelho (eds.) (1998) The Ethics of Organ Transplants: The current debate (Amherst, NY, Prometheus Books, Inc.), p. 140.

[3] There are three ways in which such a market for transplant organs might operate; a futures market (in which persons sell their organs for transplantation on their death), a current market (in which persons sell their organs for transplantation while they are still living), and a market for the organs of cadavers (in which the “owners” of a cadaver sell its organs.) Of these three possible markets the current market in organs is usually held to be the most morally objectionable. Those few persons who have argued in favour of allowing a current market in human organs include Gerald Dworkin (1994) Markets and morals: the case for organ sales in Gerald Dworkin (ed.) Morality, Harm and the Law (Boulder, CO: Westview Press); Mark J. Cherry (2000) Is a market in human organs necessarily exploitative? Public Affairs Quarterly 14, 4 and Richard A. Epstein (1997) Mortal Peril: Our inalienable right to health care?
I thank an anonymous referee for drawing my attention to the implicit claims that underlie Dworkin's argument. Dworkin, op. cit., p. 157.

The British Transplantation Society and the Renal Association object to allowing a current market in kidneys on this basis, stating that one of the necessary conditions that must be met prior to a living donor kidney transplantation’s being performed is that the donor’s decision to donate was “entirely voluntary and not due to coercion or the offer of an inducement.”

Even a cursory glance at the bioethics literature will support this claim, as noted in J. M. H. Dworkin, op. cit., p. 299. It should also be noted that since Zutlevics and Hughes claim that allowing the poor the option of selling their organs would reinforce their impoverishment, their arguments might also be read as arguments that address the effectiveness (or lack thereof) of organs sales in improving the well-being of the poor.

Although Zutlevics does not use the term “constraining option” to refer to the option of selling one’s organs it is clear that she believes it to be one, for she holds that the possession of it by the poor is likely to reinforce their presence within their autonomy-undermining economic circumstances. (Zutlevics, op. cit., p. 299). It should also be noted that since Zutlevics and Hughes claim that allowing the poor the option of selling their organs would reinforce their impoverishment, their arguments might also be read as arguments that address the effectiveness (or lack thereof) of organs sales in improving the well-being of the poor.

Even a cursory glance at the bioethics literature will support this claim, as noted in Janet Smith (1997) The Preeminence of Autonomy in Bioethics, in David S. Oderberg and Jacqueline A. Lang (eds.)

Human Lives: Critical essays on consequentialist bioethics (New York, NY, St. Martin’s Press, Inc.). However, it must also be recognised that such a cursory glance might not reveal the very significant challenges to its preeminence that autonomy is now facing. Feminists, for example, are criticizing the value of autonomy, holding it to be based on an unrealistic ideal of personhood. See for example, Carolyn Ells (2001) Shifting the autonomy debate to ideology, Journal of Medicine and Philosophy 26, 4, and S. Sherwin (1992) A relational approach to autonomy in health care, in S. Sherwin (ed.) The Politics of Women’s Health: Exploring Agency and Autonomy (Philadelphia, Temple University Press). In addition to this communitarians are starting to argue against what they perceive to be the excess respect accorded to autonomy in recent bioethics. See Willard Gaylin and Bruce Jennings (1996) The Perversion of Autonomy: The proper uses of coercion and constraints in a liberal society (New York, NY, The Free Press).

Similarly, Carl Schneider argues that medical ethicists accept the primacy of autonomy too uncritically in the face of empirical evidence that demonstrates that patient rights and welfare could be better promoted by a return to a more paternalistic approach. Carl E. Schneider (1998) The Practice of Autonomy: Patients, doctors and medical decisions (Oxford, Oxford University Press).

Dworkin, op. cit., p. 156.

Dworkin, op. cit., p. 156.


I thank an anonymous referee for drawing my attention to the implicit claims that underlie Dworkin’s response.

The Health and Safety at Work Act, 1974, 2 (1).

This, of course, assumes that the number of jobs available to the poor will not decrease as a result of the imposition of such regulation. If this assumption is mistaken (as conventional economic wisdom holds it to be) then one will have to consider whether the degree of well-being and autonomy that is forfeited by those who lose their jobs outweighs that which is gained by those whose jobs are made less hazardous.
Autonomy, Constraining Options, and Organ Sales


[21] As Hughes puts it, exploitation “is not just what happens when a worker labors in a factory for a wage, it’s what happens to make that happen.” Hughes, 1998, op. cit., p. 92.


[23] Zutlevics, op. cit., p. 300


[25] I thank an anonymous referee for clarifying these two different senses of the term “presuppose”.


[27] Although see Zutlevics, op. cit., p. 300.


[29] Zutlevics, op. cit., p. 300.


[31] G. V. Taddei (1991) The market for bodily parts: a response to Ruth Chadwick, Journal of Applied Philosophy, 8, 1. The relevant section of the Human Organ Transplants Act is section 1(1)(a), under which it is inter alia “an offence to make or receive any payment for the supply of, or offer to supply, an organ removed from a living person which is intended to be transplanted into another individual whether in Great Britain or elsewhere.”

[32] Of course, it is a very different question as to whether or not a market system should be used to distribute the kidneys that are procured through the use of a current market. The useful distinction between using a market for procurement and using it for distribution was noted by Henry Hansmann (1989) The economics and ethics of markets for human organs, Journal of Health Politics, Policy and Law, 4, p. 60. For suggestions concerning how to distribute organs procured through a market by nonmarket means see Dworkin, op. cit., p. 158, and Harris and Erin, op. cit., pp. 114–115.

[33] I thank Paul Hughes and two anonymous referees for their exceptionally helpful comments on an earlier draft of this paper.