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The Body as Gift, Commodity, or Something in Between: Ethical Implications of Advanced Kidney Donation

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An innovative program recently initiated at the University of California, Los Angeles (UCLA) Medical Center allows people to donate a kidney in exchange for a voucher that a loved one can redeem for a kidney if and when needed. As a relatively new practice, the ethical implications of advanced kidney donation have not yet been widely discussed. This paper reflects on some of the bioethical issues at stake in this new donation program, as well as some broader philosophical issues related to the meaning and moral salience of commodification. I first consider whether the literature on commercial markets in organs—a longstanding topic of bioethical debate—can meaningfully inform ethical analysis of kidney voucher programs. Specifically, I consider whether and to what extent common objections to the exchange of kidneys for cash also apply to the exchange of kidneys for "kidney vouchers." Second, I argue that the contrast between the ethical issues raised by these two practices highlights the need to understand commodification as existing on a continuum, with different degrees of commodification giving rise to different ethical issues. Doing so can help sharpen our understanding of commodification as a moral concept, as well as its relevance to broader debates about the moral limits of markets.

Keywords: *advanced donation, commodification, kidney donation, kidney voucher, organ transplantation*

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I. INTRODUCTION

It is almost trite to begin a discussion of organ trading by pointing out that there is currently a shortage of transplantable kidneys and that this shortage comes at a significant human cost. Yet, it is an important fact that renal transplantation offers improvements to both life expectancy and quality of life relative to dialysis. Any measures that could alleviate the current shortage of transplantable kidneys would, therefore, achieve an important good, and in this respect are prima facie desirable. One such measure is the advanced donation recently initiated at the UCLA Medical Center, which allows people to donate a kidney in exchange for a voucher that a loved one can later redeem for a kidney—or, more precisely, a prioritized opportunity to receive a kidney as part of a paired exchange within the national kidney registry. The program effectively facilitates kidney donation in advance of when the intended recipient may require a transplant, an option that may open up the possibility of donating a kidney for those who face (for example) work, military, or family commitments that would prevent donation at a later date, or who may be too old to donate by the time that the intended recipient needs a transplant (Flechner et al., 2016). Thus, the donor may give a kidney and specify that a designated recipient will receive a kidney transplant (or at least an increased chance of receiving one) if and when needed.

One notable feature of advanced donation programs is that they arguably involve the commodification of transplantable kidneys. For the purposes of this paper, I adopt a broad understanding of commodification. Commodification (so understood) occurs whenever a good is valued or treated according to market norms, even if it is not bought and sold on a literal market. Commodification should also be understood as a matter of degree. The extent to which a particular good is commodified can fall on a continuum ranging from complete commodification on one end to complete noncommodification on the other, with varying degrees of incomplete commodification falling in between (Anderson, 1995; Radin, 1996).

Although the advanced donation program does not involve the literal buying and selling of bodily organs, it nonetheless involves some degree of commodification. The option of exchanging one's kidney for a "kidney voucher" expands the range of goods for which kidneys can be exchanged. Under the advanced donation program, the donation of one's kidney is no longer required to be a "pure" gift; kidneys can also be exchanged for a "kidney voucher" redeemable by one of up to five designated recipients. By opening up this option, the advanced donation program arguably treats transplantable organs as fungible and interchangeable to a greater extent than ever before. As Krawiec and colleagues suggest, kidney voucher programs represent the latest development in the evolution of kidney transplantation from a "pure" gift model to a model featuring many of the hallmarks

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of market exchange. They describe the advanced kidney donation program as part of a broader trend away from treating kidneys as gifts and toward treating kidneys as market goods:

> Referred to by some as a kidney "gift certificate," "layaway plan," or "voucher," [the Advanced Donation Program] builds on the matching market principles that are fundamental to modern-day kidney exchange. But . . . because of the advanced nature of the donations, [the program] pushes the market analogy even further, relying—for the first time—on a present investment (in the form of a healthy kidney) by donors who have an expectation of future return (in the form of a compatible kidney for a friend or loved one), leaving those donors potentially vulnerable to non-performance. ADP also incorporates—again, for the first time in the transplant setting—the use of formal contracts regarding those performances, by including a contractual agreement in the form of consents to donate and receive a transplant. (Krawiec, Liu, and Melcher, 2016)

In this sense, although the advanced donation program falls far short of opening a (commodity) market in organs, the exchange of kidneys for "kidney vouchers" can plausibly be described as involving a greater degree of commodification than a pure gift model.[1] Indeed, Howard Broadman—who is credited with the idea for the advanced donation program and who donated a kidney in exchange for a voucher for his grandson—has commented that the scheme was motivated by a desire to allow nondirected organ donors to receive something valuable in exchange for their donation. Broadman reports that when he learned his grandson would one day require a transplant, he ". . . thought about just generally being altruistic. . . . But then I started thinking, 'This is bull—. I should get something for this. This is America'" (Hawryluk, 2016).

This paper aims to make two key contributions to the theme of "organs for trade." The first is to examine the ethical issues raised by the commodification of transplantable kidneys and to consider how these issues might vary depending on how (and the extent to which) kidneys are commodified. Accordingly, this paper begins by outlining the key concerns that have been raised regarding commercial markets in organs, then considering whether these concerns also apply to advanced donation programs. In doing so, I hope to determine whether (a) the apparent moral legitimacy of exchanging organs for kidney vouchers provides reason to believe that the exchange of kidneys for cash would be equally legitimate, and conversely (b) whether the objections raised against paid living kidney donation provide reason to think that advanced donation may be more problematic than has been recognized to date. I answer both of these questions in the negative. As I show below, few of the objections to the exchange of kidneys for cash extend to the exchange of kidneys for "kidney vouchers," whereas those objections that apply to both tend to apply more strongly to kidney sales than to advanced donation.

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There are two reasons why this is an important avenue of inquiry. Notably, one common objection to paid organ donation holds that it is morally problematic to treat human organs as mere commodities (see, e.g., Kimbrell, 1997; Not for sale at any price, 2006; Delmonico, 2015). If advanced kidney donation can also be plausibly described as involving the commodification of the body (albeit to a lesser extent), it might be thought that those who are opposed to kidney selling have reason to be opposed to—or at least wary of—the exchange of organs for kidney vouchers. Accordingly, it is worth considering whether any of the other key moral concerns that have been raised against paid living kidney donation raise issues for the advanced donation program.

The analogy between advanced donation and organ selling could also point in the opposite direction. Some proponents of paid living kidney donation have argued that the extent to which transplantable organs are already commodified under the current altruistic system (in the sense that organs are implicitly understood as fungible and alienable from the self) suggests that we ought to more fully embrace the commodification of human organs by allowing direct financial payments (Cherry, 2005, 2008). Insofar as advanced donation further commodifies the practice of organ donation, it might provide further grounds to think that transplantable kidneys should be treated like any other market commodity. Moreover, in the broader philosophical literature on commodification and the moral limits of markets, some have argued that if it is ethically acceptable for a particular good to be possessed and exchanged outside of the market, it is also permissible to allow the same good to be bought and sold on an appropriately designed market (Brennan and Jaworski, 2016). Because advanced donation opens up a new way of trading kidneys (i.e., not only as a "pure" gift but also in exchange for having a loved one receiving increased priority for a future kidney), it arguably renders more plausible the claim that the exchange of kidneys for cash under an appropriately regulated commercial market could be equally acceptable. Once kidneys are exchanged for "kidney vouchers," it could be argued that paid living kidney donation would not be radically different from practices we already accept; it would merely expand the range of goods for which kidneys can be exchanged.

The second main aim of this paper is to consider what the comparison between the ethical issues raised by kidney sales and advanced donations can reveal for our broader understanding of commodification as a moral concept. I argue that the contrast between the ethical issues raised by voucher programs and organ markets highlights the need to understand commodification as existing on a continuum, with different degrees (or different kinds) of commodification giving rise to different ethical issues. I conclude that legitimate concerns about commodification must amount to more than the claim that some good is constitutively not a market commodity. Rather than focusing on the charge of commodification per se, it would be more fruitful

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to focus on the underlying concerns that commodification arguments often aim to express.

II. ADVANCED DONATION AND PAID DONATION

While there has to date been relatively little bioethical discussion on the ethics of advanced donation, there is a substantial body of bioethical literature discussing the ethics of paid living kidney donation. Although the debate is still evolving, many of the core arguments both for and against organ markets are by now well rehearsed. This section of the paper surveys the key arguments that have been raised against proposals to financial incentives for living kidney donation and considers whether such arguments could extend to advanced donation programs. This is not to imply that the objections to paid donation listed below are necessarily successful in their own right. Instead, my aim here is to provide an overview of the major issues at play in the organ market debate and determine whether those who (rightly or wrongly) find these arguments compelling in relation to kidney sales should also find them compelling in relation to advanced kidney donation.

It is worth noting that those who argue against the current prohibition of kidney selling have suggested many different approaches to regulating the market. The most radical proposals suggest that we allow transplantable kidneys to be bought and sold in much the same way as any other commodity, either in a domestic market (Epstein, 2000; Barnett, Saliba, and Walker, 2001; Hippen, 2005) or internationally (Richards, 2003; Taylor, 2005). Others have suggested heavily regulated monopsonistic systems, with the state acting as the sole purchaser of organs and distributing them according to existing criteria (Harris and Erin, 2002; Erin and Harris, 2003; Friedman and Friedman, 2006; van Dijk and Hilhorst, 2007; Roff, 2011; Working Group on Incentives for Living Donation, 2012; Beard, 2015). Still others advocate offering indirect financial incentives, such as tax cuts or college scholarships, to nondirected living kidney donors (Linford, 2008; Shetty, 2009; Petersen and Lippert-Rasmussen, 2012). The following discussion focuses on the ethical implications of domestic monopsonistic markets in organs, which are perhaps the most commonly proposed market model. Accordingly, I leave to one side the possible issues raised by distributing kidneys via the market, as well as the question of whether indirect financial incentives like college scholarships circumvent the key objections to paid living kidney donation.

III. HARMS TO KIDNEY SELLERS

Perhaps the most widely voiced concern about a market in organs is that kidney sellers would face an unacceptable degree of harm by participating in a legal trade in organs. Arguments to this effect could proceed in one

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of two ways. First, it is notable that the (limited) research on the experiences of kidney sellers under existing (mostly black) markets in organs documents a range of profound harms. Kidney sellers commonly report poor physical and psychological health (often attributed to the sale of their kidney), are subject to stigma and social isolation within their communities, and often find that their financial status worsens rather than improves in the aftermath of the transaction. It is perhaps unsurprising, then, that most kidney sellers worldwide claim to regret their decision to sell a "spare" organ; as Delmonico puts it, the result of both Iran's regulated system and black markets worldwide is that "the poor remain poor following a vendor sale and then with one less kidney" (Griffin, 2007, 505). One objection to a legal market in organs holds that the experiences of kidney sellers on a regulated market would likely be similar, especially in light of possible difficulties implementing measures which could address these harms (Scheper-Hughes, 2008; Capron, Danovitch, and Delmonico, 2014; Koplin, 2014; Martin and White, 2014).

Second, it might be thought that although certain (e.g., medical) risks could be addressed through carefully screening prospective sellers, providing long-term follow-up care, and increasing the amount of money received by sellers, not all of the harms associated with kidney selling are necessarily amenable to regulatory solution. Perhaps most significantly, changing the social norms and values underlying the shame and stigma commonly experienced by kidney sellers would seem to be a profoundly difficult task, particularly in the short term. This point is especially significant insofar as there is something especially problematic about practices that involve paying people to suffer degradation or humiliation. As Erik Malmqvist argues:

> Can there be a high enough salary for (literally) licking other people's boots? We may want to distinguish between paying people to take physical risks and paying them to suffer degradation or humiliation. If we reason analogously about kidney sales, we may think that handsome payment can compensate vendors for health risks but not for shame and stigmatisation. (Malmqvist, 2015, 112)

There is little reason to expect that advanced donation would give rise to similar problems. Objections to organ markets based on the well-being of kidney sellers are grounded in the idea that there are relevant differences between the acts of kidney donation and kidney selling, such as differences between sellers' and (unpaid) donors' access to health services, reliance on work involving physical labor, and motivations for donating an organ, as well as how the act of donation is understood by themselves and perceived by others. Given that the aim of the advanced donation program is, in effect, to facilitate paired kidney exchanges separated in time, there is no obvious reason why advanced donors would face greater risks than other living kidney donors.

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IV. SOCIAL AND LEGAL PRESSURES TO DONATE

In addition to concerns about harms to kidney sellers, some commentators have argued that establishing a legal trade in kidneys would predictably cause people living in poverty (including those who chose not to participate in the market) to face harmful social or legal pressures to sell a kidney. One particularly salient concern is that once transplantable organs become seen as economic assets, people living in poverty might be pressured or coerced into selling their "spare" bodily parts (Malmqvist, 2014, 2015; Rippon, 2014). Such concerns are not merely speculative. Research from India (Budiani-Saberi et al., 2014; Cohen, 2001; Goyal et al., 2002), Pakistan (Naqvi et al., 2007), and Iran (Zargooshi, 2001) reveals that some kidney sellers in existing markets only sell after being pressured to do so by family members, money-lenders, or employers. If establishing a regulated market in kidneys would replicate these problems, this would provide an important reason against doing so.

The practice of kidney selling could also disadvantage people living in poverty in less direct ways. Satz (2008, 2010) suggests that a legal trade in organs could have pecuniary externalities that harm those who do not participate in the market. For example, if organs are commonly treated as collateral for personal loans, it may become more difficult to obtain a loan if one is unwilling to sell a "spare" kidney. Although markets in organs are far from the only form of trade to generate pecuniary externalities, Satz suggests that there may be something especially morally problematic about markets that further disadvantage people living in poverty for being unwilling or unable to sell a "spare" bodily part.

Could the advanced donation program also provide an option that some people might reasonably prefer not to have? The option of donating an organ in exchange for a kidney voucher (redeemable by one of a maximum of five intended recipients, designated at the time the donor signs the informed consent form) is presumably unlikely to generate *pecuniary* externalities. It is, however, possible to imagine scenarios where the option of advanced donation could result in familial pressures to become an advanced donor. Although such risks already exist (and strategies have been developed to manage them) in relation to kidney donation more generally, advanced donation could potentially result in such pressures being exerted in scenarios where donation would otherwise have been impossible. Objections to kidney selling based on harmful social pressures are, therefore, at least somewhat applicable to advanced donation. Yet, the problem of harmful social and legal pressure is more acute in the context of paid donation. This is both because there is a wider range of possible reasons to pressure someone to sell a kidney than to exchange one for a kidney voucher (in the sense that many more people could benefit from cash than could benefit from a transplant) and because opening a market in organs

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(but not facilitating advanced donations) may implicitly communicate the idea that "spare" organs are rightly treated as a form of capital, a message that may undermine the high value that is currently placed on protecting living donors from undue pressure (see, e.g., Rippon, 2014).

V. IMPACT ON ALTRUISTIC DONATION

One crucial empirical question is how the practice of paid living kidney donation would affect rates of altruistic donation. It might be thought that by creating new incentives to donate one's organs, a market would merely add to the existing practice of altruistic donation. However, financial incentives can have unintended effects. A growing body of research in social psychology and behavioral economics suggests that extrinsic incentives (such as monetary rewards) can change how options are perceived in ways that undermine intrinsic incentives (such as moral commitments) to act in particular ways. In other words, financial incentives can crowd out other motivations (Bowles, 2016; Sandel, 2013). In relation to kidney sales, it is sometimes argued that financial would crowd out altruistic living-related and/or deceased donation by eroding motivation to donate without financial reward and/or decreasing trust in the transplantation system more generally (Capron, 2014; Rothman and Rothman, 2006). Predictions that paid living kidney donation would undermine altruistic living and deceased donation have arguably been borne out by Iran's continued difficulties promoting living-related and deceased donation alongside its legal model of paid living kidney donation (Ghahramani, 2016; Ghods, Savaj, and Khosravani, 2000; Zargooshi, 2008). The potential for a market system to crowd out uncompensated donation is concerning insofar as there is reason to believe that fewer organs would be procured overall (if, e.g., the reduction in altruistic donation outweighs the increase in paid donation) and/or insofar as there is independent moral reason to prefer that organs are donated altruistically.[2]

Is there reason to expect that advanced donation would adversely affect altruistic organ donation? Like financial incentives, kidney vouchers do offer the possibility of a certain kind of reward to nondirected living kidney donors. Yet unlike financial incentives, advanced donation does not introduce a radically new set of possible motivations for donating one's kidney. Instead, advanced donation makes it possible for family members to provide a kidney for a loved one in contexts where they might not otherwise have been able to do so. In this respect, advanced donation is more closely analogous to paired kidney exchanges than a commercial market in organs. Rather than displacing intrinsic incentives to donate one's kidney, advanced donation programs merely provide a new way of acting on these motivations.

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VI. KANTIAN CRITIQUES

Kantian critiques of organ selling suggest that the sale of bodily organs treats persons in ways that fail to acknowledge their human dignity—which is to say, their intrinsic value or “unconditional and incomparable worth” (Munzer, 1994, 266). Some have argued that the sale of human organs is impermissible because placing a price on bodily organs fails to express proper respect for the seller’s human dignity. If (as Kant seemed to believe) one’s self is not wholly distinguishable from one’s body, a market in kidneys arguably treats sellers (and not merely the body parts they consent to sell) as if they were mere commodities lacking intrinsic worth. On this view, markets in organs not only objectify the seller’s body parts but also objectify the seller (Morelli, 1999; Cohen, 1999, 2002).

Such arguments have proven controversial, for two reasons. The first is that there is no necessary connection between buying and selling some good and treating it as a mere thing lacking intrinsic value. For example, famous works of art are often regarded as having worth beyond the monetary value they can attract, even when this artwork is traded on the open market.[3] A second objection holds that although persons have intrinsic value, their transplantable organs do not; a kidney, after all, is not a person. There is, therefore, no inconsistency in regarding persons as above price while regarding nonessential bodily parts as mere things (Gill and Sade, 2002; Cherry, 2005; Alpinar-Şencan, 2015). Indeed, as Taylor (2005, 149–155) points out, Kantians typically acknowledge that there are some contexts in which treating part of one’s body as a mere thing is compatible with treating one’s self as having intrinsic value (if, e.g., the aim is to preserve one’s life or save the life of another), raising the question of why treating one’s transplantable organs as a mere thing *in the context of paid kidney donation* should be considered unacceptable.

Some recent Kantian arguments against organ markets have attempted to accommodate these concerns. Adrian Walsh (2001, 2015), for example, argues against the sale of human organs on broadly Kantian grounds while rejecting both the thesis that markets *necessarily* destroy intrinsic valuation (which Walsh labels the “entailment thesis”) and the thesis that human organs are themselves intrinsically valuable. In place of the entailment thesis, Walsh defends the “corrosion thesis” that market institutions predispose us to regard goods as mere commodities that lack intrinsic value. Notably, the entailment thesis can be disproven by pointing toward examples of goods that, like famous artworks, can be bought and sold without being regarded as mere commodities. However, the corrosion thesis can accommodate such counterexamples; it holds only that there is a general tendency to regard things that are traded on the market as lacking intrinsic value. Walsh (2015) further argues that while bodily organs themselves may not be intrinsically valuable, bodily parts (and particularly nonregenerative organs) are

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sufficiently closely associated with our personhood that the way we regard persons' bodies is likely to affect how we regard persons. Accordingly, if bodily organs are traded on the market, there will be a strong tendency not only for these bodily organs but also for persons themselves to be regarded as lacking intrinsic value. In a similar vein, Samuel Kerstein (2013, 186) argues that in contexts where the interests of the poor are already widely seen as less important than the interests of the well off, it is "all too easy to envisage a slide from the thought that . . . poor persons' intimate body parts are for sale to the idea that they themselves are fungible."

Could these broadly Kantian objections to the exchange of kidneys for cash also apply to the exchange of kidneys for kidney vouchers? Like financial incentives, the advanced donation program renders transplantable kidneys exchangeable for something that the donor values more—in this case, the prioritization of a loved one if and when they should need a kidney in the future. Yet, there is a crucial difference between these two different kinds of exchanges. The Kantian objection to organ selling sketched above turns on the idea that we are predisposed to regard goods that are *traded on the market* (as well as proximate good) as lacking intrinsic value. Although this may tend to be true of goods that are bought and sold for cash, it is by no means clear that we are equally predisposed to regard goods as lacking intrinsic value if they are exchanged under the highly restricted conditions of the advanced donation program. Indeed, the exchange of kidneys for "kidney vouchers" more closely resembles an indirect gift from the donor to their intended recipient than a market trade. Such exchanges are presumably highly unlikely to corrode the view that persons and/or their body parts have intrinsic value.

VII. EXPLOITATION

One common objection to paying living kidney donors is that such payments would be exploitative. However, exactly what is meant by this claim is not always clear, as the charge of exploitation can be understood in several different ways. One common definition holds that exploitation amounts to offering somebody an *unfair price* for a good or service (Wertheimer, 1999). On this understanding of exploitation, organ markets need not be exploitative; as many proponents of paid donation have pointed out, establishing a suitably generous minimum payment to kidney sellers would "not only neutralize the exploitation argument" (so understood) but also "create a considerable level of benefit for some of the poorest people in the world" (Wilkinson, 2003, 132).

However, there are other ways of understanding the charge of exploitation, some of which are compatible with the idea that even a well-regulated market could be exploitative. Jeremy Snyder (2010; 2012) has described

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three accounts of exploitation in particular. "Micro fairness" accounts define exploitation in terms of whether the benefits of the transaction are distributed fairly, given the social and economic background conditions to the transaction. "Macro unfairness" accounts link exploitation to the idea that it is morally problematic to take advantage of unjust background conditions, especially when one plays a role in perpetuating that injustice. "Exploitation as the mere use of others" sees transactions as exploitative when they involve treating others in ways that are degrading or disrespectful. Even if concerns about "micro fairness" exploitation can be met by increasing the size of the payment to sellers, it could nonetheless be argued that organ markets are exploitative because (at least under current social conditions) buyers and/or policymakers take advantage of structural injustices for which they themselves are partly responsible (Mitra and Biller-Andorno, 2013), because commerce in bodily organs is degrading or disrespectful (Sample, 2003), or because policymakers ought to provide ways of overcoming poverty that do not require the poor to sell "spare" bodily organs (Zutlevics, 2001).

Of the accounts of exploitation listed above, micro fairness accounts are most directly relevant to advanced donation. There is a risk that the intended recipient of an advance donation may never be matched with a donor (Flechner et al., 2016; Liu, Krawiec, and Melcher, 2016), with the result that the donor would make a significant sacrifice for limited or no reward.[4] It might be thought that if the chance of the intended recipient receiving a transplant is too low, then advanced donors would be exploited, as the distribution of the benefits of the exchange would be unfair. Of course, it is true that the risk that one's intended donor may not be matched for a transplant can be addressed in the donor and recipient informed consent form. However, it can nonetheless be argued that donors' informed consent would merely render the transaction *consensual*, not *nonexploitative;* donors might freely consent to be exploited. Precisely where the threshold should be drawn for a nonexploitative exchange arguably remains an important open question.

The possible relevance of "macro fairness exploitation" and "exploitation as mere use of others" to advanced kidney donation is less clear. In relation to macro fairness exploitation, it should be noted that there is no obvious connection between material deprivation and participation in the advanced donation program. Unlike a system of paid donation, there is no obvious sense in which advanced donation takes advantage of unjust background conditions. "Exploitation as mere use of others" faces further obstacles. The argument that kidney sales necessarily objectify the seller has proven deeply controversial, in part because this argument turns on the controversial idea that treating a person's body parts as a mere commodity necessarily involves treating the person themselves as a mere commodity (Wilkinson, 2003). The charge of "exploitation as mere use of others" appears even more strained

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when kidneys are traded not as a commodity, but rather as a means of providing a future transplant for a loved one.

VIII. COMMODIFICATION AS A THREAT TO HUMAN FLOURISHING

Some philosophers and legal scholars have voiced a general concern that the social conditions for human flourishing are threatened when an ever-expanding range of goods is treated as market commodities, including perhaps especially those goods that are closely connected to our bodies and/or our sense of personhood. Radin (1996, 15), for example, argues that conceiving of goods like bodily integrity, sexuality, and bodily organs purely in terms of their market value is likely to "engender[] inferior understandings—conceptualizations—of what a person is"; conceptualizing such goods as market commodities is thought to alter the "texture of the human world" in ways that threaten the social conditions for human flourishing. Holland concurs:

> The increasing commodification of the body . . . contributes to a diminishing sense of human personhood on an individual level, even as it erodes commitments to human flourishing at the societal level. (2001, 264)

The philosophical lineage of concerns about commodification reaches back at least as far as Marx, who famously argued that capitalist culture corrupts our sense of value and undermines our ability to recognize (and therefore achieve) important human goods. Marx offered the following scenario as the ultimate conclusion of commodity culture:

> Finally, there came a time when everything that men had considered as inalienable became an object of exchange, of traffic, and could be alienated. This is the time when the very things which till then had been communicated, but never exchanged; given, but never sold; acquired, but never bought—virtue, love, conviction, knowledge, conscience, etc.—when everything . . . passed into commerce. It is the time of general corruption, of universal venality, or, to speak in terms of political economy, the time when everything, moral or physical . . . is brought to the market to be assessed at its truest value. (1847, 30)

Where Marx suggested abolishing the market to preserve our ability to recognize nonmarket values, some contemporary critics instead recommend restricting its scope—including, potentially, by blocking the commodification of goods such as bodily organs.

Although it may be true that the commodification of an ever-increasing range of goods poses a threat to human flourishing, it is difficult to know how heavily this particular consideration should weigh against the case for paid living kidney donation. The force of such arguments depends on the extent to which allowing kidneys to be bought and sold on the market would contribute to this more general trend toward universal commodification, as

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well as whether there are better ways to stem this trend than by blocking a market in kidneys.

If concerns about human flourishing have uncertain strength when applied to kidney sales, they seem even less likely to weigh heavily against advanced donation programs. Although advanced donation programs arguably do commodify transplantable organs to some degree, it seems unlikely (if not wholly implausible) that the option of donating a kidney in exchange for prioritizing a loved one in the future would encourage the view that organs should be conceived of as market commodities rather than gifts, let alone promote the broader worldview that *all* things can and should be conceived in terms of their market value.

IX. ALTRUISM AND SOLIDARITY

Richard Titmuss' *The Gift Relationship* presents a seminal critique of commercial systems of blood procurement. Titmuss argued, in part, that social policy can play a significant role in shaping the way that citizens understand their relationships with others in their society.[5] According to Titmuss, a noncommercial system of blood donation encourages people to act on altruistic motives and express solidarity for strangers in their political community, whereas commercial markets in blood "repres[s] the expression of altruism [and] erod[e] the sense of community" (Titmuss, 1997, 314). Some critics of paid kidney donation have drawn on aspects of Titmuss' work to argue that the practice of paid living kidney donation is also likely to shape social relations in ways that undermine social solidarity (see, e.g., Singer, 1985; Delmonico and Scheper-Hughes, 2003; Campbell, 2009; Koplin, 2015). One line of argument holds that unlike the practice of organ donation, the practice of organ selling would likely promote attitudes that are inimical to relations of political solidarity, such as the attitude that the poor ought to accept any economic opportunities available to them, including those that are dangerous, inherently harmful, and widely perceived as degrading (Koplin, 2015). Others have argued that because markets in body parts and bodily services are more deeply (and more intrinsically) enmeshed with material inequality than other forms of trade, those who participate in such markets as sellers (and the social groups from which they are drawn) are especially likely to be seen as and/or treated as lesser beings (see, e.g., Phillips, 2011, 2013).

Whatever force Titmuss-style objections might have when applied to commercial markets in blood or transplantable organs, they do not easily extend to the context of advanced donation. Rather than displacing opportunities to act on altruistic motives, advanced donation allows willing donors to act altruistically when logistical considerations would otherwise prevent them from doing so. Moreover, unlike living-related donation,

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advanced donation both carries the possibility of benefitting a loved one in the future and, at the time of donation, directly benefits a stranger on the waiting list. In this sense, advanced kidney donation is perhaps even closer to the kind of practice that Titmuss endorsed than directed living kidney donation. Finally, it is worth noting that many potential nondirected living kidney donors express concerns that donating to a stranger now would preclude donating to a loved one if they need a kidney transplant in the future (Veale et al., 2017). The possibility of listing several family members on a kidney voucher could go some way toward addressing these concerns and in so doing potentially encourage kidney donation to strangers in one's community.

X. THE ENDS OF MEDICINE

Some critics of paid donation argue that physicians' professional obligations, including especially the obligation to do no harm, preclude involvement in any form of organ market. Of course, any form of live donor organ transplantation seemingly breaches the principle of nonmaleficence to some extent. Yet, although it is widely thought morally permissible for medical professionals to help a kidney donor assist a sick or dying loved one, some argue that helping a patient *sell* an organ is inconsistent with the goals of medicine, properly understood. In this vein, Arthur Caplan claims that establishing a legal trade in organs would involve an unacceptable deviation from the norms of the medical profession:

> The core ethical norm of the medical profession is the principle, "Do no harm." The only way that removing an organ from someone seems morally defensible is if the donor chooses to undergo the harm of surgery solely to help another, not to make money. The creation of commerce in body parts puts medicine in the position of removing body parts from people solely to abet those people's interest in securing compensation as well as to let middlemen profit . . . The resulting distrust and loss of professional standards are a high price to pay to gamble on the hope that a market may secure more organs . . . for those in need. (2014, 412–13)

Caplan's argument turns on the idea that a market in organs would expand the range of cases in which healthcare professionals are allowed to breach the principle to "do no harm" too far beyond the (justifiable) exception currently drawn for altruistic donation. It is hard to imagine an analogous argument being leveled against advanced donation. The idea that people should be permitted to donate in advance of when their intended recipient might need a transplant (with the specific aim of providing them with a kidney if and when needed) requires only a straightforward extension of the principle that it is morally permissible to allow a person to undergo the harm of surgery in order to help a loved one. Accordingly, advanced donation

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seems consistent with how physicians' professional obligations are currently understood.

XI. SLIPPERY SLOPE CONCERNS

One final set of objections holds that even if a system of paid living kidney donation could in principle be designed in ways that address some of the key moral concerns, such a system would, in practice, devolve into a less tightly regulated trade in organs (Rothman and Rothman, 2006; Capron, Danovitch, and Delmonico, 2014). This is partly because the rationale for establishing a carefully regulated system of financial incentives can also be used to argue that any impediments to a trade in organs should be lifted. Indeed, some commentators have defended open international markets in organs on precisely these grounds. Richards, for example, argues that:

> If it is presumptively bad to prevent sales altogether, because lives will be lost and adults deprived of an option some would choose if they could, it is for the same reason presumptively bad to *restrict* the selling of organs. (2003, 140)

The concern here is that even if some form of tightly regulated market system would not in itself be ethically unacceptable, any limitations on the scope of the market would be short lived. Once the state establishes a regulated market (and thereby signals that there is nothing inherently wrong with buying and selling organs), limitations on payments might not be obeyed and/or might not survive in the long term.

A second form of slippery slope argument points toward the likely international effects of establishing a domestic market in organs. Although kidney selling is prohibited in almost every country, organ trafficking remains a serious global problem. Those who have sought to curb the black market trade within their country often leverage international norms against transplant commercialism. This would no longer be possible once the United States (or other Western nations) adopt some form of regulated market. Even if it is possible to establish an "ethical" market in one country, doing so could, promote or entrench unregulated or poorly regulated forms of the organ trade (Padilla, 2009; Capron, 2014). Notably, the idea that unregulated and poorly regulated markets in organs are morally problematic is relatively uncontroversial. Even the most ardent advocates of organ markets acknowledge that existing black markets are rife with abuses, and few defend the international black market trade in human organs.

Could a slippery slope argument be leveraged against advanced donation? One possible version of such an argument, hinted at toward the beginning of the paper, might hold that allowing the exchange of organs for kidney vouchers could give further leverage to those who argue in favor of allowing transplantable organs to be exchanged for cash on a regulated market. An

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argument to this effect would face two difficulties. The first is to show that the anticipated outcome—i.e., the creation of an open market in organs—is, in fact, morally problematic. As the extensive bioethical literature on kidney selling suggests, this is itself a controversial claim. The second is to show that taking the initial step down the slope would make the anticipated outcome likely enough that we ought not to take the first step down the slope—in this case, that we ought not allow advanced donation. The extent to which advanced donation would make the creation of a regulated market in organs more likely is a complex empirical question that I do not attempt to fully resolve here. However, given that the obvious differences between donating an organ for cash and doing so to provide an organ for a loved one, and considering that few advocates of organ markets have yet drawn parallels between organ markets and advanced donation, the slope from advanced donation to kidney sales does not appear to be a particularly slippery one.

XII. RECONSIDERING COMMODIFICATION ARGUMENTS

The upshot of the above discussion is that very few of the common objections to financial incentives for kidney donation apply to kidney voucher systems. This is not necessarily surprising, for while both financial incentives and advanced donation seek to increase the supply of transplantable kidneys by allowing the exchange of one's kidney for something that one prefers, they do so in very different ways. A market system would create financial inducements for people to donate body parts that they would, in the absence of payment, prefer to keep. In contrast, the advanced donation program aims to facilitate transplantation when logistical issues prevent the intended donor from donating directly to their intended recipient. In this sense, advanced kidney donation can be described as enabling transplantation in cases where the donor and intended recipient are "chronologically incompatible" (Veale et al., 2017). Although both systems could be said to involve the commodification of transplantable organs (albeit to a different extent), there is little significant overlap between the ethical issues raised by these ways of exchanging kidneys.

This reveals something important not only about the ethics of advanced kidney donation but also about commodification as a moral concept. Claims that a particular practice would involve wrongful commodification are common in many areas of bioethical inquiry. Yet, such claims are not always supported by a detailed explanation of *why* it would be morally problematic to view or treat a particular good as a commodity. Critics of commodification arguments claim that concerns about commodification, therefore, often beg the question. Caulfield and Ogbogu (2012, 14), for example, argue that commodification arguments are ". . . rarely more nuanced than the following: commodification is bad because it leads to commodification." Where

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commodification arguments have been elaborated in more detail, they are sometimes taken to encompass a broad range of moral concerns, including concerns about exploitation, objectification, the social meaning of specific goods, and the effect of markets on social goods and communal relations (Marway, Johnson, and Widdows, 2014). The ability of the advanced donation program to sidestep (most of) the moral concerns raised by paid kidney donation suggests that the commodification of transplantable kidneys may not be morally significant in and of itself. What seems to matter is whether commodifying organs in a particular way would give rise to other moral concerns. In other words, rather than considering whether a particular practice involves wrongful commodification, it may be more fruitful to focus on the underlying concerns that commodification arguments aim to express.

This is not to claim, as Brennan and Jaworski (2016, 7) have recently argued, that there are "no legitimate worries about what we buy, trade, and sell" and that concerns about what kinds of goods should be commodified can be dismissed outright. Brennan and Jaworski defend the view that there are no goods or services that it is permissible to possess and exchange but impermissible to possess and exchange via markets. They argue that while there may be legitimate objections to particular *kinds* of markets in various contested commodities, such objections are better addressed through appropriate market regulation than by blocking the trade outright. On their view, debates about commodification should therefore move beyond the question of whether markets in particular contested commodities are morally acceptable to focus instead on how best to design markets in each of these things. In relation to organ transplantation, Brennan and Jaworski (2016, 148–49) argue that "we should all agree that kidneys may be bought and sold, even if we disagree about just how lenient or stringent the conditions are for properly buying and selling them."

The claim that commodification per se is not morally problematic should be distinguished from the claim that commodity markets in any good or service (which it is permissible to possess and exchange outside of markets) are in principle unobjectionable. The key objections to paid donation discussed in this paper point toward possible negative consequences of establishing a market in organs for those who participate in the trade, those facing a difficult financial situation, broader social goods and communal relationships, and our ability to recognize nonmarket values. Although many of these arguments would arguably apply to even a highly regulated market in organs, they are not merely concerns about commodification per se; they amount to more than the claim that transplantable organs are constitutively non-market commodities. The view that the commodification of transplantable organs is not inherently objectionable can be entirely consistent with the view that transplantable organs should not be traded on the market.

More broadly, the contrast between the ethical issues raised by advanced donation and organ markets highlights two lessons for future discussion of

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commodification, including future discussions of the ethics of organ trading. First, arguments that the commodification of a particular good is morally problematic should amount to more than the claim that allowing something to be exchanged for valuable consideration would commodify something that is not currently regarded as a market commodity. Second, some commodification concerns may only apply if the good in question is commodified in particular ways or if the degree of commodification is sufficiently great. In particular, as this paper's discussion of paid and advanced donation suggests, many objections to the commodification of transplantable organs will become progressively more relevant as transplantable kidneys are treated increasingly like a market commodity. There is, therefore, no inconsistency in holding that organs may be exchanged for kidney vouchers but not for cash.

Finally, it is worth emphasising what this paper has and has not attempted to show. I have sought to map the terrain of the ethical issues raised by paid living kidney donation and consider how the literature on this subject can inform ethical analysis of advanced donation. I have left open the question of whether the arguments against kidney selling discussed above ultimately succeed. I have also not attempted to provide a comprehensive exploration of the ethical, political, sociological, and conceptual issues at stake in advanced donation; instead, this paper focuses on those ethical issues that are linked to the commodification of human organs. I do hope to have shown that, despite some surface similarities, the exchange of organs for cash and the exchange of organs for "kidney vouchers" give rise to very different ethical issues. The view that paid living kidney donation is ethically unacceptable does not entail the view that kidney voucher programs are also morally suspect. Conversely, the view that advanced donation is ethically acceptable does not suggest that the exchange of kidneys for cash should likewise be permitted.

It is worth reiterating that, in the face of a persistent shortage of transplantable kidneys, an important good is achieved by facilitating donations that would not have occurred otherwise. It is for this reason that the advanced donation program is an exciting innovation. It is also for this reason that questions surrounding how the ethics of organ trading, and the extent to which our body parts ought to be commodified, remains a deeply important area of bioethical inquiry.

NOTES

1. Although this paper does not consider the issue in depth, it is notable that advanced donation is not the only recent innovation that arguably further commodifies kidney exchange. For example, see the recent literature on global kidney exchange involving "financially incompatible" living donors (Rees et al., 2017; Wiseman and Gill, 2017).

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2. Note, however, that neither the empirical claim that "crowding out" would result in an overall reduction to the organ supply nor the moral claim that organ donation is preferable to organ sales are uncontroversial (see e.g., Taylor, 2005).

3. I thank an anonymous peer reviewer for raising this point.

4. Promisingly, however, Flechner and colleagues (2016) report that all nine of the activated named advanced donation program recipients to date were successfully transplanted within 18 months.

5. For a detailed overview of both this particular argument and its role in Titmuss' broader case against commercial markets in blood, see Archard, (2002). Titmuss further argued that commercial systems of blood procurement are less efficient, more likely to transmit transfusion-related diseases, and more prone to shortages than altruistic systems—claims that have not been consistently borne out by more recent research.

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