

Why Not Sell a Kidney?

Written by Michael Huemer, published on Apr. 6, 2019

Last weekend, I was at the annual PPE Society Conference (Philosophy, Politics, & Economics) in New Orleans. The keynote speaker was Al Roth, the Nobel laureate economist who pioneered kidney exchanges. This is a system that helps people who need kidney transplants.

It's illegal to pay anyone for a kidney donation, so people who suffer kidney disease have to rely on a loved one to donate a kidney. But usually, your loved ones are not biologically compatible, so you can't use their kidney. Roth's idea was that your loved one can donate a kidney to someone *else* who needs a kidney, and in return, *that* person's loved one can donate a kidney to someone else who needs a kidney, etc., until it gets to someone who can donate a kidney to *your* loved one. Kidney donation chains like this are now being used. Needless to say, this was a great innovation — Al Roth is now responsible for saving probably thousands of lives (<https://www.bbc.com/news/magazine-20004050>).

Also perhaps needless to say, we need to do more. 100,000 people need kidney transplants; most will die waiting for it. 5,000 die every year, waiting for a kidney transplant (<http://lkdn.org/mission.html>). Yet there are millions of people who have two healthy kidneys and could donate one and save someone else's life. The cost to the donor would be minimal, compared to the value of a life saved. But almost no one does it, because there is still *some* cost and risk, and there is *no* benefit to the donor. And the reason there is no benefit to the donor is that it is illegal to pay the donor for giving a kidney. (The donor can be compensated for medical bills, transport, and the like, but not for the personal risk involved in going into major surgery, or the general disutility of donating a kidney.)

I think this law is basically a form of mass murder. The government is not merely *allowing* 5000 deaths a year, or *failing to save* 5000 people; it is *killing* 5,000 people a year. Since the killing is unjustified (it is not, e.g., done in self-defense, or defense of an innocent third party, or as just punishment for a heinous crime, or as a form of euthanasia), it is murder.

General principle: Suppose a person is in danger of dying from some threat. The person has a plan that would in fact save him from the threat, as long as no one interferes. Suppose you show

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up and use threats of violence (against someone) to intentionally stop the person from executing his plan. As a result, the person dies. In that case, you killed him. If you had no justification for it, then you murdered him.

Example 1: Marvin is starving. Fortunately, he has found some food, which will sustain him without harming anyone else. Sam shows up and forcibly stops Marvin from eating. As a result, Marvin starves to death. In this case, Sam killed Marvin. If he had no adequate justification for his action, then Sam murdered Marvin.

Note that the force doesn't have to be directly deployed against the victim; it could be deployed against third parties who would otherwise aid the victim. Thus, consider:

Example 2: Marvin has fallen overboard from his ship and is drowning. A crew member is about to throw Marvin a life preserver, which would in fact save Marvin's life. Sam appears with a baseball bat and threatens to beat the crew member senseless if he throws the life preserver. The crew member is thus predictably deterred from helping, and as a result, Marvin drowns. In this case, Sam killed Marvin. Again, if he had no adequate justification, then Sam *murdered* Marvin.

I take those judgments to be intuitively obvious. The government's behavior is similar:

Example 3: Marvin has kidney disease, which will kill him unless he gets a kidney transplant. Sue is willing to sell Marvin a kidney for \$50,000, which Marvin would pay and which would in fact save his life. (Obviously, she is not willing to give it for free.) Sam shows up and threatens to kidnap Sue and lock her in a cage for five years if she sells Marvin the kidney. Sue is thus predictably deterred from helping, and Marvin dies. In this case, Sam killed Marvin. If he didn't have an adequate justification for it, then Sam is a murderer.

That's what the government is doing (https://en.wikipedia.org/wiki/National_Organ_Transplant_Act_of_1984). Of course, organ sale opponents would say Uncle Sam *does* have a justification: organ sales are "exploitative", or they "commodify" the body, or they'll be unfair to the poor, or they will displace purely altruistic organ donations.

I must say that I find these arguments absurd. I don't see anything exploitative about organ sales. But even if I did, "exploitation" would have to be incredibly terrible to justify *killing* thousands of people a year to prevent them from doing it. It's also bizarre to threaten the would-be *victims* of the supposed exploitation with imprisonment if they should let themselves be exploited.

I don't know what "commodification" is or why anyone should care about it. But it would have to be incredibly terrible to justify imposing death on people to prevent them from doing it. Again, even if there is this terrible crime of commodifying, it's bizarre to threaten imprisonment of the supposed victims of this commodification.

I think these attempted justifications are rationalizations for an emotion-based reaction. This is nowhere clearer than in the case of the argument that the poor will be disadvantaged due to inability to afford organs. The poor are also disadvantaged in the housing market. Some people think the government should therefore subsidize housing for the poor; no one, however, concludes that housing sales must be banned.

Likewise, no one claims that all housing should be provided for free by altruistic carpenters who work purely for the good of others. That is as realistic as the idea that all organ donations should be provided for free by altruists.

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