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PubPol 580: Reading Notes for Class 19 (November 12, 2009)

On Thursday we'll talk about policies that seek to increase organ donations (including those that offer financial incentives). There can be no doubt that the demand for kidneys and other organs for transplantation exceeds the current supply by a substantial amount. And there can be no doubt about the magnitude of suffering and loss of life associated with this gap. The policy challenge is how to reduce this suffering without crossing lines associated with other deeply held moral values. The law in the US outlawing markets in organs is paternalistic, but individual liberty is not the only moral value that is at play in this matter.

I'd like to start the discussion with a focus on policies that might be effective that don't resort to markets in organs. But since it's not clear we can solve the problem this way, I think it makes sense to eventually spend a few minutes talking about the market approach and what regulations might make for a morally acceptable market-based policy.

To keep things manageable, let's focus on kidneys, since this represents the largest sector of the organ transplant field. Transplantable kidneys come from two sources: cadavers and live donors. The "what are the questions" piece sets the stage. The article from *The Economist* surveys what's happening in this policy area in other countries.

Policy discussions often focus on four sets of strategies for increasing the supply of kidneys:

1. Donations (with no money changing hands--all medical costs associated with donations are covered). This is currently the principal policy aimed at increasing supply, with almost exclusive emphasis on cadaveric organs. On the whole, efforts of this kind have not come close to closing the gap between demand and supply. For one example, see the Michigan site: <http://www.giftoflifemichigan.org/default.htm>. Think about why these programs fail to close the gap, since understanding that is a step toward thinking about effective new programs.
2. Presumptive donations. Currently the US model is an opt-in model. A number of nations use a form of opt-out, with increases in the rates of donation. Do you think such policies are ethical? This will be the subject of the first presentation in class. The optional reading by Thaler is worth looking at.
3. Incentives for donations and other voluntary programs. In recent years various states have considered small financial incentives that avoid looking like quid pro quo transactions in organs. These have focused exclusively on cadaveric organs. For instance, states have considered tax credits for donations, burial benefits, etc. What incentives like this are most likely to be both effective and to be seen as morally appropriate by most segments of society? Another approach, organized privately, involves "reciprocal altruism" to motivate individuals to sign up to be donors upon their death. One example is LifeSharers (<http://www.lifesharers.com/>), through which those who pledge to be donors get first access to kidneys when a fellow pledger dies and a kidney becomes available. Last week the New England Journal of Medicine had an article on "A Nonsimultaneous, Extended, Altruistic-Donor Chain" (<http://content.nejm.org/cgi/content/short/360/11/1096>).

4. Markets in organs. It is currently illegal in the US to sell a kidney, but in recent years advocates of markets in kidneys have been winning converts. Rather than think about a “free” market in kidneys, think about whether you believe a regulated market can be justified (and what the necessary regulations would look like). One possible objection to a market in organs is that only the rich (or those with solid health insurance) could benefit. We can avoid this issue—important as it is—by stipulating that the government would cover the costs for recipients. This separates our judgments about the market as a method of allocation from legitimate concerns about the justice of the distribution of outcomes in the market. So assume the government is the sole purchaser of kidneys and distribution is unrelated to ability/willingness-to-pay. The big difference between the “incentives” policies and a market policy is that payments to donors would be set at a level that closes the gap between demand and supply. The other big difference would come from opening the market to live donors. This could involve a lot of money but it could also generate a lot of supply. A recent article in *Kidney International* suggested \$40,000 as a starting point for a market in kidneys. The basic question is: given the potential social benefits in terms of the extension of lives and the reduction in suffering, how far should society be willing to move toward market policies for kidneys in order to close the kidney gap? Why do you draw the line where you do?

In thinking about regulation of markets (particularly regulations that are paternalistic—motivated by concern for one of the parties, usually the donor), it is useful to recall the two principal justifications for markets. The first is that they generate good consequences. This is inferred, in the absence of externalities, from the fact that both parties to a market transaction enter into it voluntarily. This tells us, so the story goes, that ex ante both parties think they will be better off. Thus, if no one else is affected, the transaction is Pareto optimal and welfare-improving in the aggregate. The second justification focuses on individual liberty and autonomy and argues that, in the absence of externalities, individuals should be allowed to make up their own minds, and that the freedom to do so is key to individual autonomy. Both arguments combine in Mill’s thought. The first is a direct utilitarian justification and the second one is indirect—that in the case of self-regarding actions, individual choice is an important embodiment and expression of autonomy.

These reasons seem to me to leave several doors open for someone who believes in state intervention to prohibit or regulate markets in organs. The first one has to do with the difference between ex ante and ex post consequences (and the evidence about the consequences of organ sales in developing countries like India seems relevant here). The second one has to do with the “no externalities” assumption, arguing that transactions in organs are other-regarding actions. A third is that the sellers of organs have encumbered judgments and paternalism may therefore be justified. A fourth might argue that such transactions are unjust (say, because they are exploitative). You can probably add to this list.