

Buying land and selling kidneys

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I was recently invited to give a lecture in Kolkata on whether to legalise the sale in human organs (the kidney in particular). Coincidentally, the day before the lecture, I was in Singur to discuss with farmers the issue of land acquisition. Some of the farmers I met said they were not ready to sell their land, whatever be the price offered. Other, more affluent farmers claimed that the returns from farming were small, and so they would not mind selling their land if they got a suitable price. On the face of it, land acquisition and legalisation of the trade in human kidneys seem to have little in common. But one can indeed draw a parallel between the two if one thinks in terms of the legal and ethical limits of economic transactions.

Most day-to-day market transactions involve 'willing' buyers and sellers. Barring taxation and quality control, the state has little or no role to play in them. On the flip side are transactions where either the buyer or the seller is 'unwilling'. When one of them exerts pressure over the other or adopts dishonest means, it is naturally considered unlawful. But the act of buying and selling human kidneys is unacceptable in the eyes of the law even when both the buyer and seller are willing. In the case of agricultural land, on the other hand, the State can have the legal sanction to acquire it even in the face of unwillingness from farmers.

In economics, we evaluate everything in terms of three main criteria: efficiency, equity and individual freedom. Advocates of the free market usually prioritise efficiency and individual freedom, while those leaning left emphasise equity. If the transacted commodity, be it agricultural land or one's kidney, is more valuable to the seller than to the buyer, then the transaction generates greater economic efficiency. But if poverty and deprivation are among the reasons for selling (as in the case of a poor farmer selling land, or his kidney), then, the efficiency argument notwithstanding, the transaction becomes problematic from the point of view of equity. The criterion of individual freedom dictates that no one can interfere in the decision to sell or not to sell things that are our own, such as our labour or our land, or, according to some, our kidneys.

Coercive land acquisition by the government such that the farmer is paid a price at which he would not have voluntarily sold his land clearly fails in terms of all these three criteria. If it is indeed more efficient to set up a factory on farmland then that means the total profits and the social benefits offset the loss to the farmer, monetary as well as non-monetary. In that case, there must be a price at which the farmer will voluntarily give up his land.

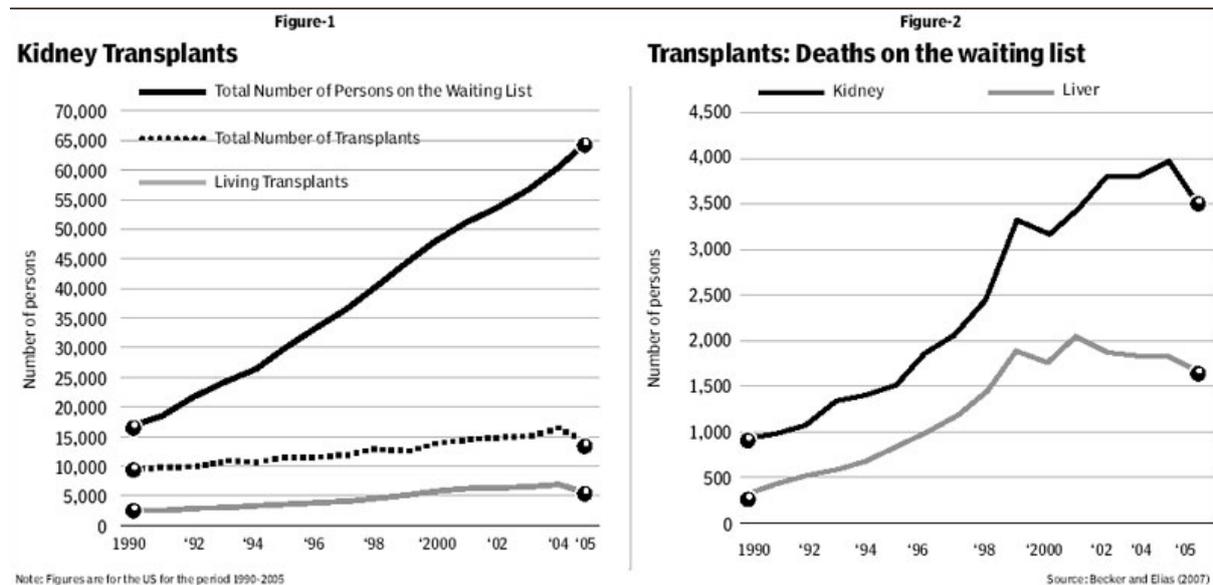
In the case of kidney sales, or distress selling of his land by a farmer, it is a voluntary exchange and so the issue of concern is equity. The problem is that there is no dearth of inequitable transactions around us (for example, child labour). Some market transactions make inequity more apparent and shocking —such as a poor person selling his kidney— than others, such as a poor farmer selling his land, which we have gotten used to. But this is clearly somewhat subjective. Also, it is not as though equity would be restored if all these markets were eliminated altogether. Would the desperate circumstances that might drive a poor person to sell his kidney on the black market be alleviated by a crackdown on organ trade? The only way to deal with the problem of inequity is poverty alleviation, and not shutting down markets arbitrarily.

Besides equity, two other arguments are usually advanced to restrict voluntary transactions in the marketplace. For instance, if a transaction between Tom and Dick has an adverse effect on Harry (e.g., pollution), then Tom and Dick clearly cannot have an unrestricted right to trade. However, for both land and kidney sales, it is not clear that there is any indirect effect on third parties. Of course, there might be aesthetic or moral objections to any exchange (e.g., prostitution or gambling), but it is difficult to use them to legally forbid a transaction, because they are almost always subjective.

Another case for regulating voluntary exchanges could be made when there are questions about the judgement of the seller or the buyer. Is he equipped to weigh the pros and cons of his decision? Does he possess complete information about the risks involved? Clearly, these are reasonable concerns. But the difficulty is that they apply to many other contexts (e.g., taking a loan, making a risky investment, gambling, smoking, drinking etc) and while they call for suitable regulations and information campaigns, it is hard to justify banning all such activity.

Are there any other arguments against legalising sales of kidneys? To answer this, let us turn to some facts about kidney transplants. No country except Iran has legalised the sale of human kidneys, though most countries allow family members to donate the organ. In India, selling one's kidney was banned by law in 1994.

The surgical procedure for removing a kidney is not too risky and usually there is no significant long-term damage to the donor either if they have access to adequate healthcare. What then could be the reason for prohibiting the sale of an organ that one is free to donate? Those in favour of legalising kidney trade have a simple argument: it is better to have two individuals living with a kidney apiece than one of them living with two. This is the argument put forward by economists Gary Becker and Julio Elias (2007)*. As Figure 1 shows, there is a big and growing gap between people on the waiting list for kidney transplants in the US and the number of kidney transplants. Figure 2 shows the rising number of deaths on the waiting list. Becker and Elias argue that if the price of a commodity is fixed by law at zero, it will naturally give rise to excess demand, and consequently to black markets and abusive practices. However, they also acknowledge that the long-term health consequence of selling kidneys has not been good in developing countries, even when it is legal, be it in India before the ban or in Iran after legalisation. A large percentage of respondents in surveys conducted in India and Iran claimed they developed health problems after a kidney was removed and as many as 80% said they would reverse their decision to sell their kidneys if they got another chance. It is, of course, possible that the results of a similar survey would be different in a developed country with better healthcare facilities. Let us, therefore, assume for the purposes of our discussion that the surgical procedure does not entail much risk. Would it be all right then to legalise the kidney trade? To answer this question and to understand land transactions better, let's consider the case of heart transplants. That's the topic for the next part of this essay.



Why would you sell your heart?
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Let us assume for the purposes of our discussion that surgical procedures do not entail much risk. Would it be alright then to legalise the kidney trade? To answer this question as well as understand land transactions better, consider the example of heart transplants. Medical technology has made them possible, but the replaced heart comes from the body of a just-deceased person who had pledged beforehand to posthumously donate the organ. Should trading in human hearts be legalised, assuming that healthcare standards are high and there is no use of force or coercion? It is one thing if a dying man allows, in exchange for an agreed-upon sum, his heart to be taken out after his death and given to another person. But what if a healthy but impoverished individual, of his own free will, agrees to be killed and have his heart extracted for transplantation so that the money from the sale can help his family? No legal system in the world would find this acceptable, and with good reason.

It is well known that trading in hair, blood, sperm and eggs is legal in most countries, primarily because the human body can naturally replenish these. This is not the case with the heart and the kidneys, though the body can function quite well with one kidney instead of two. So, in thinking about whether to legalise kidney trade—or, for that matter any other trade that poses serious health risks on the participants—our judgement depends on the extent of these risks. Even the most aggressive advocate of free markets would agree that somewhere between the hair, where the risk is zero, and the heart, where death is certain, there needs to be a line demarcating the limits of the right to buy and sell.

In countries where government regulation is lax and healthcare for the masses is not up to the mark, this line needs to be drawn more conservatively. However, it would be naïve to think that imposing a legal ban puts an end to a troubling practice. There is a thriving black market for kidneys in India, and like all such markets, the biggest gain from it goes to the middlemen. Their presence ensures that sellers get only a fraction of the price paid by the buyers, and the latter are often duped too. And since everything happens outside the ambit of the law, corrupt doctors flout healthcare norms at will. Stories of organ rackets and scams abound in our newspapers. Many feel that legalising the transaction and imposing regulations on the organ market will help matters. While Iran is hardly the best example of a free market economy, it was motivated by similar sentiments in legalising the kidney trade in 1988. As a result, it is the only country where the demand for human kidneys is met with adequate supply.

It must be mentioned that in Iran, kidneys are not bought and sold in the open market, but only within a network created by the government and charitable medical institutions. But as noted earlier, the surgical removal of the organ has been problematic in Iran, and many sellers have ended up regretting their decision. Therefore, one feels somewhat hesitant to laud the fact that in this market demand is being met with supply.

Where a black market exists, such as India, potential sellers are deterred by the fear of being exploited by middlemen, of health risks, and of getting caught. Consequently, supply is always less than demand. Legalising the transaction could potentially reduce malpractices and health risks and ensure a better price to the seller. This is likely to push up the supply considerably in poor countries. However, increased supply will reduce the price. More importantly, unless the poor are provided adequate legal and medical safeguards, now a much larger segment of the population would be exposed to exploitation and health risks. As a result, it is not clear that legalising the sale of kidneys would lead to an increase in overall welfare compared to the earlier situation where a much smaller section of the population was involved in such transactions.

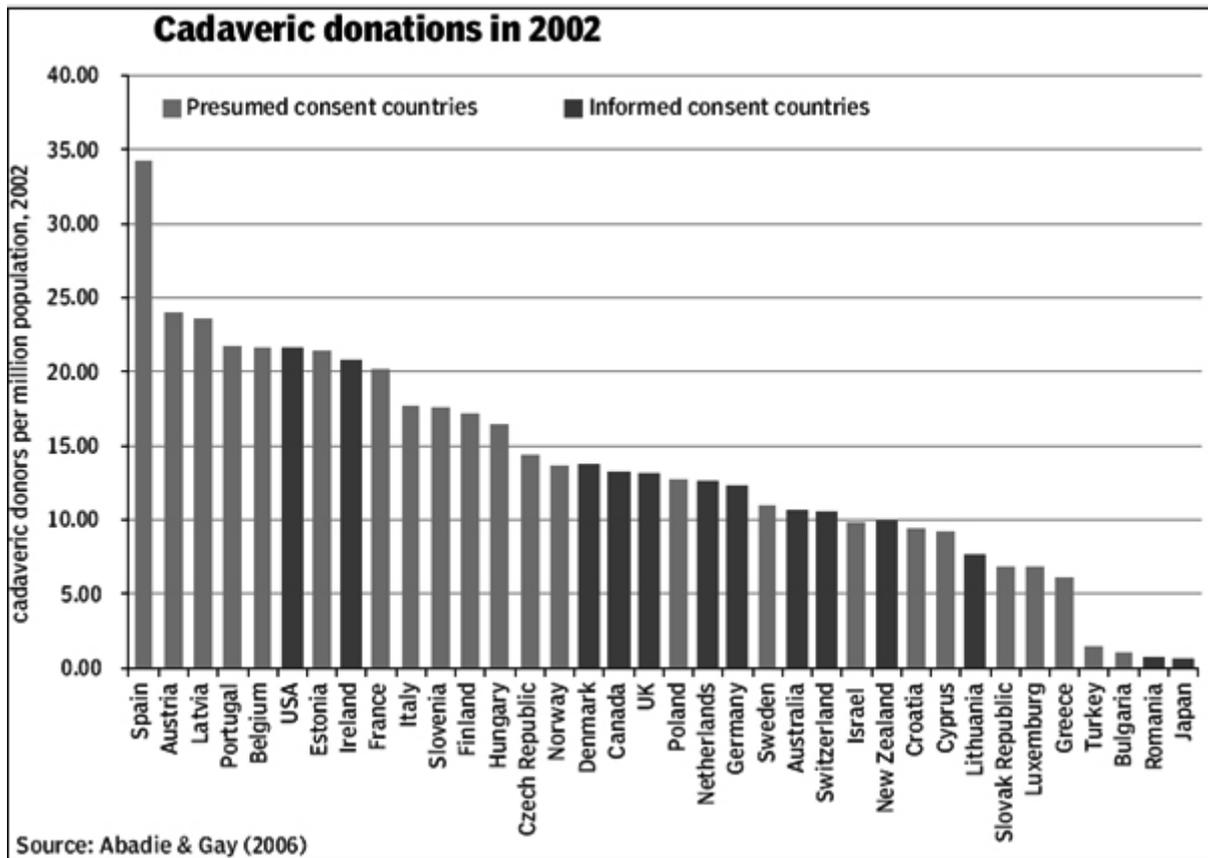
What about donations? The transaction is the same as in sales, with the same health risks and consequences. The difference is that one of the transactions is commercial, while the other is voluntary. There are no financial transactions involved in donations, and this automatically minimises the problems of quality control and malpractice. Health-related risks are similar for both, but the presence of middlemen and traders increases these risks considerably in the case of commercial transactions relative to donations. So, the arguments against legalisation mentioned earlier remain.

But society does have to pay a price for this kind of regulation. The biggest one in this context is the high probability of mismatch between donor and receiver organs. It is possible to start a system of exchange between all donors and receivers. The recent amendments to India's 15 year law on organ transplants aim to facilitate this. But it is not difficult to gauge the limitations of such a system. The monetary system, after all, was invented because the barter system is subject to the problems of double coincidence of wants and coordination.

The recent amendments also aim to make it easier for the organ to be sourced from just-deceased or brain-dead individuals. In India about 1,00,000 people suffer from renal failure every year and about 80,000 people die of accidents. This suggests cadaveric donations could be an important source of organs. This is not as easy as it sounds, because donor and receiver kidneys need to match, and also, delays can make the organ unfit for transplants. In addition, there are social norms that go against putting a dead man under the scalpel.

In some countries of continental Europe, cadaveric organ procurement is based on the principle of presumed consent as opposed to informed consent as in the US and the UK. Under presumed consent, a deceased individual is classified as a potential donor unless he or she explicitly opts out before death.

Under informed consent, this is the case only if they volunteer, i.e., opt-in. Evidence provided by economists Abadie and Gay (2006)* suggests that the former increases availability significantly (see figure). Given the salience of the anti-legalisation arguments in countries like India, this seems to be a worthwhile direction to explore.



*Becker, G and JJ Elias (2007): "Introducing Incentives in the Market for Live and Cadaveric Organ Donations", *Journal of Economic Perspectives*, 2007

*A Abadie and S Gay (2006): "The impact of presumed consent legislation on cadaveric organ donation: A cross-country study", *Journal of Health Economics*, 2006.