The ethics of poverty and the poverty of ethics: the case of Palestinian prisoners in Israel seeking to sell their kidneys in order to feed their children

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Bioethical arguments conceal the coercion underlying the choice between poverty and selling ones organs

In mid-May 2006, three Palestinian prisoners detained in Israel applied to the Israeli Prison Service (IPS) for permission to sell their kidneys in order to send money to their children for food. Whether truly sincere or merely propagandistic, the request was made against the background of Israel's decision to suspend the transfer of Palestinian tax moneys to the Hamas-led Palestinian Authority, and the subsequent increasing poverty and famine in the Gaza Strip.¹

An official decision was yet to be made when this paper was written. However, the IPS chief medical officer had already made it clear that the request is likely to be rejected. Aside from emphasising that the cost of the pertinent treatment of the prisoners could not be imposed on the IPS, especially as it would greatly exceed the sum to be obtained by the sellers (ca £3500), he asserted that the IPS "won't lend a hand to endangering the prisoner". He also reiterated the official IPS policy, according to which the prisoners' consent to such transaction could not be valid, since they might have been threatened by people from inside or outside the prison.¹

This is ironic. While the IPS' professed concerns for the welfare and best interests of the prisoners are commendable, they conceal and hence reaffirm the real coercion implicit in the dilemma the prisoners face: to sell their kidney or let their children starve. Interestingly, approval of their request would have equally concealed the coercion, this time behind concerns for either their autonomy, or the welfare of their children, or both.

At present, it is unlikely that Israel will acknowledge the role of national oppression and poverty in producing this dilemma. Rather, the debate will remain focused on orthodox bioethical arguments concerning the possibility of autonomous choice in such extreme circumstances. Ideas which expose fundamental coercive social

relationships of whatever kind are normally marginalised, whereas the ones that conceal them most effectively stand the best chances of being endorsed. Here, the case of the Palestinian prisoners will be used as an opportunity to explore how bioethical arguments conceal the coercion underlying all dilemmas involving the option of selling one's organs. Free, uncoerced, people do not choose to face such dilemmas. To this degree, bioethical arguments take on an added ideological dimension—covertly supporting political and economic environments which impose tragedy on individuals by forcing them to choose between horrible options—either poverty or selling body parts. This can occur in a variety of ways.

- Confining the ethical discourse to a simple pros and cons debate: should commerce in organs be legitimised or not?² While some arguments against commerce in organs emphasise the importance of the integrity of the body and of human dignity, the question most often focuses on whether a person who faces two horrible options can make an autonomous choice or not. Of course, the answer to such a question does not depend on the specific nature of the options, but rather on whether or not the necessary and sufficient conditions for an autonomous choice are met. At the same time, the question ignores the coercion underlying the dilemma. It overlooks the simple empirical fact that people free from poverty do not face the prospect of howing to choose, autonomously or non-autonomously, between selling their body parts and letting their children starve. It is true that, some forms of coercion are, like the dilemma they impose on people, simply tragic. Sad as such forms of coercion may be, they cannot be subject to moral criticism. Other forms,

however, are socially structured, avoidable, and hence morally condemnable. It is this type of coercion that is implicit in all situations where people are forced to consider selling their body parts. It is this type of coercion that the bioethical debate helps to conceal.

- Blaming money as the key factor in the coercion associated with selling one's organs.² This view has been used to argue alternately that low-paid or high-paid transactions preclude coercion. This is simply incorrect. After all, it's not the money that is coercive; the money is merely a condition that turns selling one's organs into a possible option. Indeed, poverty would remain coercive even if kidneys had no price tag attached to them.
- The fiction that a monopsonistic (single-buyer) market in organs could, with adequate legislation, protect the poor sellers of organs from coercion.³ This is another form of concealment of the essentially coercive nature of poverty. It gives the wrong impression that the principle coercion underlying commerce in organs is the one associated with exploitative brokers and other criminals, hence the mere sale of organs does not imply coercion. well, it does.
- Selling organs is the epitome of liberty and autonomy. This is a particularly ingenious way of concealing the potential coercion underlying such choice.⁴⁻⁹ So far, this approach has had limited effect on transplantation laws. However, it builds on the historical legitimacy of the most common form of commodification of the body—commerce in labour power. If people can and do sell their bodies in the form of labour power in the marketplace, then why should they not be allowed to sell parts of their bodies in circumstances that may be even less risky than many jobs? There is, of course, abstract force to this argument. However, it overlooks the fact that selling one's labour power actually implies coercion. After all, people see their labour power as an alternative to abject poverty only because they are derived the freedom to sell the products of their own labour (or that of others).
- Restricting the legal notion of coercion to visible, intentional and personal threats. According to this notion, all other pressures "are not, strictly speaking, coercive" as to render consent invalid.¹⁰ This notion presupposes that poverty has no effect on individual autonomy; it's a political as opposed to personal issue, and is thus of no concern to bioethics. Some authors

even argue that poverty enhances autonomy, as only the poor can realistically value their body.¹¹ Such arguments resemble the ironical comment alternately attributed, though in different formulations, to Emil Zola, Anatole France and Mark Twain, that "everyone is free to sleep under a bridge, but poor people are more likely to make use of the opportunity."

- Only altruistic unrelated donations and non-commercial inducements should be allowed. This is the most effective way in which bioethical arguments conceal the coercion implicit in selling body parts. In Israel, unlike the UK, commerce in organs from the living does not by itself constitute a criminal offence. Overt commercial transactions, however, are not approved by the Israeli National Transplant Council, a body resembling in remit the British Human Tissue Authority, which has recently superseded the Unrelated Live Transplants Regulatory Authority.¹² The Israeli position on this matter thus happens to be more akin to the soft stance taken by the European Commission.¹³ Like the UK and the European Commission, however, the Israeli system encourages altruistic unrelated donations. This is notwithstanding the full awareness of the Israeli National Transplant Council that the presumption of altruism in such cases is utterly fictitious. Indeed, approved transactions often turn out to have been purely commercial, usually when things had gone sour for one or another party. The particular economic interests of the relevant institutions may explain why the fiction of altruistic unrelated donations has come to exist and what role it plays. Motivated primarily by considerations of cost containment (the interests of the

patients being relevant only to the degree that they are compatible with such considerations, not the other way around), the system constantly seeks new ways to increase the number of kidneys obtained from unrelated donors, without this appearing as an official endorsement of blatant commerce. In the meantime, sick funds, the Ministry of Defence and private insurers, supported by the Ministry of Health since 1996, have provided substantial funding to about 50% of the patients on the waiting list: those who had agreed to seek a kidney overseas and have the operation there. The authorities have turned a blind eye to the fact that in the vast majority of these cases the kidneys had actually been bought, often in breach of the local law.¹⁴

To sum up, many bioethical arguments render the legal status quo sufficiently comfortable for all parties involved (perhaps apart from prisoners) as not to require any formal legalisation of commerce in organs. These arguments have successfully obscured the fact that the choice between starvation and any form of commodification of the body implies coercion. In doing so, they may have concealed the coercive origins of poverty, but they have certainly exposed their own poverty. Political and economic factors may coerce people into making tragic choices. Those engaged in the ethical and legal evaluation of healthcare have so far focused on the conditions that could ensure that such choices are made autonomously. Perhaps bioethicists should focus more on how to ensure that people do not have to make such choices in the first place.

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