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Abstract

What, if any, is the problem with treating bodies as objects or property? Is there a defensible basis for seeing bodies as different from “other” material resources? Or is thinking the body special a kind of sentimentalism that blocks clear thinking about matters such as prostitution, surrogate motherhood, and the sale of spare kidneys? I argue that the language we use does matter, and that thinking of the body as property encourages a self/body dualism that obscures the power relations involved in all contracts that cedes authority over the body. Recognising the self as embodied, however, also makes it harder to insist on sharp distinctions between activities that involve the body and those that “just” involve the mind, hence harder to justify refusing payment for explicitly body services while condoning it for those to which the body is more incidental. I therefore provide a modest defence of monetary compensation for those who “donate” bodily products or services. Compensation does not, however, mean markets for there is at least one sense in which the body is special. This is that more so, and more intrinsically than other markets, markets in body parts or bodily services depend on inequality. I use this to make a case against such markets.

Keywords

bodies, property, markets, prostitution, surrogacy

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Body ownership rhetoric is part of a common-sense language for asserting bodily integrity and claiming personal rights. “It’s my body and I’ll do what I like with it” is a particularly rebellious version, conjuring up the defiant teenager who insists on her right to have her navel pierced. But the idea that it’s my body, not yours, shapes discussion of abortion, euthanasia, and cosmetic surgery; and explicit claims about the body as private property are not uncommon in discussions of the right to exclude. In one (critical) assessment of the language of body property, J. W. Harris reports an audio-cassette that warned children against inappropriate touching by telling them to “remember your body is your own private property, your body’s nobody’s body but your own.”¹ In a more positive assessment, Rosalind Petchesky stresses the importance attached to owning one’s own body in eighteenth- and nineteenth-century slave writings, and the radicalism of those moments when the objects of property asserted themselves as subjects of property too.² The capacity to resist intrusions on the body, and determine for oneself what can or cannot be done to it, has been central to the struggle for human rights. It is sometimes formulated in what sound like ownership terms.

Most of the time, the use of property language is both intended and understood as metaphorical, but one important issue in contemporary debate is whether that metaphorical deployment should now become more literal. Should the body be treated as if it really were an item of property, with bodily services, parts, and tissues therefore available for trade? And if not, why not? When considering policies towards prostitution or commercial surrogacy, one might plausibly ask why people should have the right to charge for the use of their bodies when they are cleaning someone’s house or planting their garden, but not the same rights to charge when what is on offer is a sexual or reproductive service. Can we really justify this kind of distinction, or should we see it as sustaining the unhelpful stigmas attached to prostitution, and romanticised depictions of pregnancy and birth?³ In the context, moreover, of a rapidly growing demand for human organs and tissues—prompted by the success of complex transplant operations and developments in reproductive technology and stem cell research—an increasing number of commentators call for a loosening of restrictions on their sale. Altruistic donation of the crucial products and parts currently falls considerably short of the demand. If monetary incentives can help ensure an adequate supply, what’s wrong with introducing a market? Or as Julian Savulescu, one supporter of regulated markets in human organs, asks, “If we should be allowed to sell our labour, why not sell the means to that labour?”⁴

Part of the question is what, if anything, is so special about the body. Can we establish a defensible basis for what Nir Eyal terms “body exceptionalism”⁵: for the view that the body should *not* be treated in ways

analogous to material resources, either in reality, with bits of it rented out or sold, or in the discourses we use when talking of our bodies and selves? Or is thinking the body special a kind of sentimentalism that blocks clear thinking on matters such as prostitution, surrogate motherhood, and kidney sales? Many of the arguments we might previously have drawn on to contest notions of the body as property now appear contentious. In the seventeenth century, we could have turned to religion. When John Locke made his classic statement about every man having “a property in his own person,”⁶ he did not think of that property in the person as implying property in the body, and certainly not as conveying the absolute right to do what one wished with one’s body and bodily parts.⁷ It was rare in the seventeenth century to think of the self in terms of a body. If the body belonged to anyone, moreover, it belonged to God, hence the widely accepted prohibitions on suicide and self-mutilation.

That resource for regarding the body as special is no longer so available. Nor is the later Marxist alternative, which stressed the dangers of commodification and the alienation involved in thinking of oneself in property terms.⁸ Precisely because of that rampant commodification, many things previously regarded as outside the market are now routinely bought and sold, and the fact that something used to be exempt no longer carries such weight. Appeals to gender also have their problems, for while it is surely significant that much of the existing trade centres on women’s bodies—exclusively so as regards surrogacy or the market in human eggs, and predominantly so in prostitution—feminists have been wary of challenging this in terms that might represent women’s identities as peculiarly bound up in their sexual or reproductive capacities, or could distract attention from the exploitative nature of much other women’s work.⁹ In particular, claims about the specialness of *women’s* relationship to their bodies are regarded as too essentialising to count as good justifications for treating the body as different.

Without, then, easy recourse to religious, romantic, or essentialising arguments, I want to look again at notions of the self as proprietor and body as property, focusing on what I regard as three key problems.¹⁰ These are the problem with language, the problem with payments, and the problem with markets. In the first section, I consider why the language we use matters. Does it really matter if we employ metaphors of ownership to assert rights to bodily integrity, or model our freedom on principles of private property? The visiting Martian who failed to appreciate the importance of property relations in our societies might regard this as a puzzling way to articulate notions of rights or autonomy or freedom. But given that property *does* play such a powerful role, should the widespread use of its language trouble us?

And is it even fairly regarded as property language? “My,” after all, is used to signify any number of relationships that have nothing to do with either ownership or commodification.¹¹ The teenager who employs the rhetoric of ownership to defend her body piercing projects does not mean she owns her body in the sense of having the right to cut it into portions and sell it to the highest bidder. The woman who says “it’s my body” when asserting her right to have an abortion does not necessarily mean (though she may also think this) that she has the right to sell her sexual services as a prostitute or her reproductive services as a surrogate mother. We may use the language without at all intending a property claim; or could genuinely mean to claim ownership, but without intending full rights to rent out and sell. Contemporary legal theorists mostly repudiate all-or-nothing conceptions of property, stressing the “bundle” of rights and entitlements implied in ownership and their variable application depending on social and political context.¹² On that basis, even if I did think I owned my body and self, I might not think this gave me unlimited powers to sell. So what, if anything, is the problem?

In the second section, I turn to the issue of payment. Defenders of the body as property often claim an inconsistency in attitudes towards donation and sale, for if we are considered to have sufficient ownership rights over our bodies to donate services and parts, why do we not have sufficient ownership rights to sell? On this view, there is a potential hypocrisy in praising people when they give, yet condemning them when they seek payment, or invoking the principle of “no property in the body” when there is a question of reward, but allowing the existence of property “for the scintilla necessary to assign the property as a gift or donation to medical research or therapeutic application.”¹³ In the (in)famous case of *Moore v the Regents of the University of California* (1988), the blood cells of a leukemia patient were used (without his knowledge) to develop a highly lucrative T-cell line. When he challenged this in court, Moore was refused any right to a share in the profits, partly on the grounds that we do not “own” material removed from our bodies during operations or subsequent tests.¹⁴ Even critics of property in the body might feel troubled by judgments that permit such stark discrepancy between the profits to be made from patenting body substances and the lack of either compensation or control for the patient who provided the raw material.¹⁵

In the third section, I address more directly what is wrong with markets in bodily services or body parts. Though I distance myself from some of the bases on which we might regard the body as special, I argue here that, more so, and more intrinsically than other markets, markets in body parts or bodily services depend on inequality. Inequality is a feature of many markets, and markets generate and sustain all kinds of inequalities; but there is a benign

story to be told about many of these as simply enabling specialisms, and likely to arise even in the absence of systemic inequality. It is hard to tell that story about markets in bodily services or body parts.

Does the Property Metaphor Matter?

My starting point, and minimal claim, is that we do not need to assert property in the body in order to express what we mainly care about when we say “it’s my body,” which is bodily integrity. We have the right to stop other people doing things to or with our bodies. This is the basis for laws against rape and assault; for the right to refuse well-intentioned and life-saving medical treatment that nonetheless offends our religious beliefs; and for the belief that corporal punishment is a worse intrusion on human dignity than long-term imprisonment, even when the years spent in prison can be far more destructive and debilitating.¹⁶ But framing threats to bodily integrity as if these were acts of trespass on private property is not helpful. As Harris puts it, “the bodily-use freedom principle has whatever normative force it has without benefit of self-ownership notions. Property rhetoric in this context is unnecessary, usually harmless, but always potentially proves too much.”¹⁷

That it is unnecessary is reasonably well indicated by its irrelevance in debates over the use of corporal punishment on children. Those who insist on the rights of parents to hit their children do not normally employ as their justification the idea that children do not yet own their own bodies. Those who campaign for an end to corporal punishment do not rest their case on claims about the body belonging only to the child. The issue is bodily integrity and the rights of the child, not who owns the body. In this context, property rhetoric is unnecessary. But property rhetoric can also prove too much, for the language we adopt has consequences, and the property model is not just an innocuous way of expressing rights to bodily integrity. As Jennifer Nedelsky has argued, property builds metaphorical walls around the self, constituting others as threats to one’s freedom.¹⁸ In doing so, it instantiates a deeply individualist understanding of rights and obligations. It reinforces a protective (as well as possessive) individualism that seriously understates the chains of interdependency constituting human relations and discourages collective ways of addressing social problems.

We risk committing ourselves to more than we intend when we employ these metaphors to express bodily rights. I share Nedelsky’s concern about protective individualism, but the particular consequence I want to focus on here is the distinction property language introduces between owner and that which is owned: between “me” and this “thing” that is my body. Simple use

of the possessive does not, of course, commit us to all the sins of mind/body dualism, or to science fiction scenarios of detaching the body from the self. I can talk about my handwriting being worse than yours without any idea of us detaching our respective handwriting capacities and swopping them over. I can talk about you having a great sense of humour, without any expectation that you will send it through the post to cheer me up. But when property metaphors are more self-consciously adopted—as in endorsements of self-ownership, or when making a case for markets in body parts—the body is often treated as analogous to any other material resource.¹⁹ It comes to be regarded “as a form of external housing for the immaterial mind.”²⁰

The resulting mind/body, or self/body, dualism has been especially apparent among those who address the deficit in body parts. Cecile Fabre explicitly assimilates bodies and body parts to “other” material resources when she argues that if we accept it as a principle of justice that there should be some redistribution of money resources from those who have to those who have not, then we cannot consistently refuse to consider the same kind of redistribution from those with two working kidneys to those with none.²¹ She also suggests (though she does not consider this a necessary underpinning for her arguments) that you could undergo a complete body transplant, but so long as you held on to your brain, would still be the same person.²² Julian Savulescu sums up his own view of the mind/body relation thus: “I believe we are different from and not identical with our body, at least in the morally relevant sense. Our body is a complex machine that supports our conscious and sub-conscious life. But it is our mental life which constitutes who we are, not the machine that supports it. I am my mind. My body allows my mind to express itself and shapes who I am, but mind and body are different.”²³

These separations of body from mind, brain, or self (not, of course, the same concepts) seriously understate the sense in which we are all embodied beings, encountering the world through our bodies, and irretrievably shaped by the experiences, assumptions, and expectations attached to them. Bodies matter. Fabre notes that we can get “a new heart, new lungs, new kidneys, new limbs, and new corneas, and remain the same person.”²⁴ It is unlikely, however, that we could get a new skin colour or different sex without any disruption to our sense of who we are; and hand and face transplants have proved notoriously traumatic because of the perception of hand and face as particularly intimate expressions of the person.²⁵ We do not just “have” our bodies. In an important sense, we “are” them.²⁶

I am not claiming that adopting a language of possession or, more directly, of property commits us to a mind/body dualism, nor that this in turn commits us to the commodification of bodily services and parts. As regards actually

detachable body parts (human gametes or organs), the language of property does indeed suggest dualism, and strongly suggests a willingness to regard these parts as available for sale. But the connections are by no means straightforward, and are especially complex as regards prostitution or surrogacy. There is a pretty evident mind/body dualism at work when people talk of these activities as “renting”—as when Lawrence Stone describes a surrogacy contract as “renting out your body”²⁷ or the broker of an Indian surrogacy hostel explains to potential surrogates that “it’s like renting a house for a year”²⁸—but this is not usually the language employed by those engaged in the activity. In both prostitution and surrogacy, women report a process of distancing themselves from their bodies. But they also talk of the difficulties of doing this. It is not easy to distance oneself from sex with an unchosen stranger, or be entirely unaffected when a client treats you with minimal respect. Nor, in the case of surrogacy, is it so easy to distance oneself from the experience of pregnancy or the feelings you may have towards the baby when it is born.²⁹ Thinking of one’s body as distinct from oneself is a difficult accomplishment, and not easy to sustain.

Those who *do* sell bodily services are sometimes particularly resistant to describing their bodies as just another material resource. This might seem to confirm what sceptics of my argument will claim: that there is no necessary connection between the language we adopt to express our relationship to our body and a willingness to see that body as available for trade. I am happy to accept this, and to agree with those who have stressed that there is no inexorable move from one of these to the other.³⁰ My argument is not that talking of one’s body as object or property propels people into regarding it as a marketable commodity, nor, *a fortiori*, that simply thinking of one’s body as belonging to oneself has this effect. The problem with the language is not that using a particular vocabulary forces us into particular kinds of action. The difficulty, rather, is that it can seduce us into what Carole Pateman describes as “the political fiction, the fiction that capacities can be treated as separable from the person.”³¹ In doing so, it contributes to the obscurantism of the employment contract, minimising both the difficulties of distancing oneself from one’s body and the risks of personal subordination.

In any employment contract—whether for intimate bodily services or not—we cannot legitimately demand payment for the service if the capacities that enable us to carry it out are not, in some sense, ours. When we take, however, that further step into thinking of them as “property,” we overstate the parallel with transactions involving detachable objects like houses or cars, and understate the implication of the self. Employers do not just purchase our skills in housecleaning, gardening, or sex, for these skills necessarily

come with a body attached. As Carole Pateman puts it, “a worker cannot send along capacities or services by themselves to an employer . . . employers hire persons, not a piece of property.”³²

The standard take on this is to see it as true but trivial: yes, people take their bodies with them to work, but it’s not as if this is what they are selling. It’s not even appropriate to say they are renting out, for it is the service, not the body, that counts. We contract to put our physical and mental capacities at an employer’s disposal for a specified period, and while we must, in the process, put our bodies at the employer’s disposal, this is only because the capacities happen to be attached in this way. The body comes back to our exclusive use at the end of the period, and it would surely be absurd exaggeration to say that the *person* is subordinated or enslaved. Well, yes, but the significance of what I have described as the obscurantism of the employment contract comes into sharper focus when we look, not just at the contract, but at the labour process itself.³³ The real drama of most work situations begins after the employment contract has been signed, as employers seek to exert their authority over those whose services they have engaged, and employees have to accept, negotiate, or resist demands whose full content may only become apparent at that stage. This is true in office work, factory work, and professional employment, but can take particularly horrific forms in sex work. Assimilating employment contracts to property contracts—to the leasing out of capacities that “just happen” to be attached to a person—focuses attention only on the beginning and end of the process: on the beginning, when the deal is struck, and we are entitled to ask whether the terms were fair; and the end, when payment is made, and the body returns to its owner’s exclusive use. The fact that “we” are present throughout the deployment of our capacities is obscured. The potential subordination disappears from view.

When we talk of owning our bodies and capacities, or suggest that contracting out the use of the body is no different in kind from contracting out the use of a car or house, we imply a distinction between self, capacities, and the body that houses them. This normalises what remains a power relation. The relation will be more benign in some contexts than others: we are not all at the mercy of employers cranking up the pace of work and expecting more this year than they expected the last. Yet a benign exercise of power remains an exercise of power, however normalised and obscured by a language of property and exchange.³⁴ When employees internalise that language, moreover, and come to think of their labour as if it were indeed a separate entity, they live their working lives in what is plausibly described as a state of alienation. As Margaret Radin puts it, “they dissociate their daily life from their own self-conception.”³⁵

Where the arrangement more directly involves the body, the vulnerability and potential self-alienation are heightened, and this is one point at which we may claim that “the body” is special. Sex workers commonly set conditions in their arrangements with clients: no sex without a condom, for example, or no anal sex, or no kissing. Much of the danger of their work, however, is that these arrangements may not be honoured, for the contract is not like handing over a piece of property for money, but temporarily at least, putting oneself in someone else’s power. With commercial surrogacy, breaches of the initial agreement are less of a risk. The problem here is the often extreme regulation of the body. Bans on alcohol consumption and other regulations of diet and lifestyle are commonplace, but there may also be a ban on sex with one’s partner, a requirement for regular medical tests, perhaps including amniocentesis, and in the highly regulated Israeli agreements, a requirement to undergo selective reduction of embryos, caesarean birth, and even intrauterine fetal surgery, as considered necessary by the doctor.³⁶ Any paid employment requires things of the body and exposes it to risk, but the exposure associated with sex work and the regulation associated with commercial surrogacy far exceed the norm.

A car loses no autonomy when it is rented out, but a person agreeing to work for another always makes herself vulnerable to a loss of personal autonomy. We cannot readily avoid this, for failing a Rousseauian idyll of self-employed farmers, most of us will have to work for others at some point in our lives. The problem is that representing our agreements in property terms makes the vulnerability less apparent. In obscuring—one might say, softening—the nature of the relationship, the language of property exchange can reduce our vigilance when new demands are put on us, limit our capacity for resistance, and convince us that nothing more can be done. That danger does not only arise in the buying and selling of body parts or with activities like prostitution or surrogate motherhood. But as Carole Pateman argues in *The Sexual Contract*, it is plausible to see fictions of property in the person as especially damaging in those contracts where the body is not just incidental but the whole point.³⁷

What’s Wrong with Payment?

I have argued that the metaphors of property encourage fantasies of a self as separable from a body, and that while this does not propel us into the commodification of intimate bodily services, it can significantly reduce awareness of the dangers attached to this. Note, however, that I arrived at this conclusion partly through insisting on the self as embodied. That very insistence

then makes it harder to establish clear distinctions between activities that involve the body and those that “just” involve the mind; harder, therefore, to justify refusing payment for explicitly body services whilst condoning it for those to which the body is more incidental. If part of my objection to property discourse is that it obscures the inseparability of *any* of the services we uncontroversially sell from the body with which we perform them, I cannot so readily employ “the body” as the boundary line between activities that are legitimately rewarded with money and those that are not. I have suggested that the vulnerability associated with all employment contracts is heightened when the contract involves direct regulation of the body, but this remains a matter of degree. It would not, then, make sense to impose an embargo on all monetary exchanges involving “the body,” for to do so would imply an embargo on any kind of labour contract. This is the important truth in the feminist defence of sex work: we cannot do any kind of work without dragging the body along, and a prohibition on the sale of services that involve the body would make no sense at all.

I see, therefore, what defenders of body property mean when they ask why it is considered legitimate to trade in some bodily services but not others; or why so many societies encourage the donation of body parts or services whilst refusing in high-minded fashion to countenance any monetary reward. We can certainly distinguish, as Pateman does, between activities to which the body is incidental and those for which it is the whole point. But that alone seems incomplete, for we are happy enough for people to make a living through many activities to which the body is the point—dancing, for example, or professional football. Reservations about the sale of bodily services also cannot be based on a prohibition on touch, for this would rule out as inappropriate the physiotherapist, while ruling in as entirely unproblematic the surrogate mother, whose body need never be touched by the commissioning couple. The most plausible candidate, perhaps, is some notion of depth: the idea that intrusions deep into our bodies are more troubling to our sense of our selves than those that merely touch the surface.³⁸ This fits with the unease most people feel at the prospect of live kidney sales as compared with their relative insouciance on sales of human hair. But the depth notion, too, is unsatisfactory, with its suggestion of a core, essential, “deep” self, surrounded by a more contingent periphery. The sale of any service requires the deployment of deep internal organs (we cannot do anything without our heart and lungs). If we think, moreover, of which aspects of our bodies we regard as most closely bound up with our identities, we are more likely to specify faces (surface) than kidneys (deep inside). It is not easy to point to what it is about

the body that makes it special, or provides the necessary touchstone for separating out legitimate from illegitimate trade.

This is not to say there is no basis: even if we have trouble singling out one defining feature, a combination of the above can still be decisive. But the difficulties suggest a continuum rather than bright line, lending support to the objection that it is inconsistent to encourage the sale of some bodily services whilst refusing categorically to consider the sale of others. Where the body work is especially demanding, moreover, it seems problematic to promote donation while rejecting any notion of compensation. There are prudential objections to payment for body products and parts, including the worry that paid “donors” of blood, gametes, or kidneys will be tempted to conceal important medical information, and that introducing the possibility of payment will reduce the pool of altruistic donors and push up overall treatment costs. There is also the argument associated with Richard Titmuss’s work on the gift relationship: that a society in which people are willing to give blood to assist unknown strangers is better than one in which they will only sell their blood for money, and that permitting a market in blood promotes self-interest at the expense of altruistic motives.³⁹ I am sympathetic to this last argument, particularly where the work of donation is relatively undemanding, as in giving semen or blood.

But while the donation of blood might plausibly be regarded as a civic duty, few would think that women had a moral or civic duty to undergo the intrusive medical procedure involved in the donation of eggs,⁴⁰ or the physically and emotionally draining pregnancy of a surrogate mother; nor would we think people in general had a duty to provide spare kidneys to complete strangers. We regard the latter act, in particular, as one of great generosity, involving significant exposure to medical risk as well as considerable expenditure of time. Indeed, it is regarded by the medical profession as such an extraordinary act of supernumerary generosity that people often have to undergo psychological counselling before being permitted to do it. In countries where commercial trade in human gametes is prohibited, women who nonetheless volunteer to donate eggs are praised for their selfless behaviour. When the acts themselves are regarded as so much beyond the call of duty, is it appropriate nonetheless to refuse compensation? When they are, additionally, ones that can only be performed by one sex—as is the case with surrogacy or egg “donation”—is there not something troubling about insisting that one sex alone should provide these services for free?

Egg donors sometimes say they would welcome the offer of compensation even when they would refuse it, because they would see this as recognising

the significance of their donation. With surrogates, the case seems stronger still: one would expect, at a minimum, to compensate a surrogate for out-of-pocket expenses, special foods, visits to the doctor, babysitting costs, and loss of earnings. Beyond these, pregnancy is hard and childbirth appropriately termed labour, and however rewarding and life-changing the experience of pregnancy can be, it still involves physical discomfort, risk, restrictions on mobility, and pain. It would be difficult to justify a commissioning couple receiving these simply as a gift, without offering any compensation. It is hard to justify even in the (rare) cases where the surrogate is a relative or friend: one would imagine people wanting to show their appreciation somehow, if only by offering to fund a holiday. To be consistent, societies should either ban surrogacy altogether (which I would take as an unjustifiable restriction on autonomy); allow it only between close relatives and friends (which can bring its own problems as regards the child's sense of identity); or accept that a woman agreeing to bear a child for someone else is entitled to compensation. If surrogacy arrangements of any kind are permitted, it seems exploitative not to recognise the work involved and offer some reward.

I would argue, however, for regarding this as compensation rather than payment: compensation for actual costs, combined with some monetary recognition of the generosity of the donor; but not a market-driven payment reflecting overall supply and demand. This might appear an academic distinction, but it is important to separate out whether it is fair to ask people to do something for nothing from whether it is appropriate to introduce a market. Payment is not the same as a market, and sometimes, as Donna Dickenson puts it, “‘to pay or not to pay’ isn’t the question.”⁴¹ If I pay one of my sons to mow the lawn, I might regret, Titmuss-style, that he did not offer to do it for love, and reflect rather sourly on the transaction as evidence of the increased monetarisation of human relationships; but it cannot be said that I have introduced a market. There have to be more than two individuals involved before one can sensibly talk of a market, and it is not a market unless open to buyers and sellers with whom I have no familial connection. One of the concerns about the market in eggs for in vitro fertilisation is that differential prices are offered, depending on race, class, and IQ. (Much cited examples include the advert placed in Ivy League college newspapers, seeking an intelligent, athletic, egg donor, at least 5’10” tall, and with a SAT score of 1400, price \$50,000, and a later advert for a “Caucasian” donor of “proven college level athletic ability,” price \$100,000.) When eggs are priced according to principles of supply and demand, rather than on the basis of compensation, this allows for disturbing differentials between different categories of people. The suggestion here is that it is possible to agree to a system of compensation

without committing oneself to the introduction of a market, and that the case for the first does not determine positions on the second.

To return to the example of surrogacy, a number of countries work with a legal regime that is, at first glance, incoherent: commercial surrogacy is banned, as is payment to surrogates, but non-profit-making matching agencies are permitted to operate, using web sites to bring together potential surrogates and couples, charging “membership fees” for their service, and helping set up arrangements in which surrogates are paid “reasonable expenses.” In the United Kingdom, typical payments had reached £10,000 to £15,000 by the end of the 1990s: not so different, then, from the sums paid in explicitly commercialised markets in parts of the United States.⁴² The seeming incoherence begins to dissolve, however, when one recognises that the object of such regimes is to discourage the development of markets in reproductive services and careers in surrogate motherhood, while resisting the criminalization of surrogacy and permitting reasonable “compensation.” It remains anomalous that payments to the surrogate should end up much the same in commercial and “non-commercial” systems, but the principle underpinning the system is coherent enough. It recognizes that pregnancy is too major a commitment to be treated as pure gift; but seeks to prevent profiteering from surrogacy arrangements; and limits (though it does eliminate) the development of a market.

What’s Wrong with Markets?

This brings me to the final question: what’s wrong with markets? More specifically, what’s so special about the body that makes it wrong to introduce markets in body parts or problematic to have markets in reproduction and sex? Debra Satz argues that it is a mistake to seek answers to these questions in “essential” qualities of bodies or sex or reproduction, as if bodies have an almost sacred character, or a person’s identity is more intrinsically bound up with her sexuality and capacity for becoming a mother than with any of her other capacities. If opposition to markets in sexual services is based on a general objection to the buying and selling of those capacities most closely tied to our sense of our selves, we should, in consistency, stop people selling their paintings or book manuscripts, or refuse to pay them for working in professions they love.⁴³ And if opposition to markets in reproductive services is based on ideas about commodification degrading the mother–fetus or mother–child bond, this threatens to commit us to overly definite views on what it is “normal” for women to feel during pregnancy, and might make it difficult to justify abortion. In Satz’s argument, the case against markets in

sexual and reproductive labour or human kidneys rests on contingent, not essential, features. Markets in kidneys, for example, are typically characterised by weak agency and vulnerability: sellers who do not have full information about the medical risks, and whose extreme poverty is the reason they sell. Markets in sexual and reproductive services are problematic because they depend on background inequalities between the sexes, reinforce gender hierarchies, and perpetuate harmful images of women as subordinate to men. Prostitution, she argues, “is a theatre of inequality: it displays for us a practice in which women are seen as servants of men’s desires,”⁴⁴ while contract pregnancy “places women’s bodies under the control of others and serves to perpetuate gender inequality.”⁴⁵ But it is these contingent features, not some intrinsic alienation of women from their core identity, that makes markets in female bodies problematic. Under radically different conditions, there might be no problem at all.

I have considerable sympathy with this line of argument, which resonates with my own arguments about “the body” being engaged with us in everything we do, and not therefore providing a neat cut-off as to which things or activities are legitimately up for sale. I do, however, want to claim at least one non-contingent reason for objecting to markets dealing directly in bodies. This is that more so, and more intrinsically than other markets, markets in bodies rely on inequality. Inequality is a feature of most markets, and insofar as they produce winners and losers, markets generate and sustain all manner of inequalities. There is, nonetheless, a benign story that can be told about many of them as simply enabling specialisms: I am good at one thing, you are better at another; and if each of us concentrates on what we are better at and trade our respective products, both can end up more prosperous. Theorists of unequal exchange have pointed out the meretricious nature of this benign story when it is produced to explain away inequities in international trade,⁴⁶ but there is still an intuitive truth to it. It is hard even to begin to tell that story about markets in bodily services or parts.

From Shylock’s “If you prick us, do we not bleed?” to Sojourner Truth’s “And ain’t I a woman?,” the body has figured as the great leveller, the shared reality said to carry us beyond social, economic, or racial distinction, and help us develop more inclusive understandings of humanity. We all have bodies. But this universal feature is not only something that helps the articulation of human rights or the recognition of shared vulnerabilities. It is also what makes it so implausible to imagine people as specialising in bodies per se. Variations in *kinds* of bodies clearly allow for specialisms in athletic bodies or tall bodies or beautiful bodies, but billions of people the world over have a body, mostly including two working kidneys. In an imagined world of

social, economic, and gender equality, why would some of those choose, out of all possible activities, to specialize in kidney vending? It is hard to conceive what, in those circumstances, would propel anyone to sell—though correspondingly easy to imagine that, in that ideal egalitarian world, many more would offer to donate.

Similar arguments apply, if with more qualification, to the trade in intimate bodily services. Most adults can do sex; most women of child-bearing age can do babies; so what, other than inequality, leads some people but not others to specialise in the provision of sexual or reproductive services? It is a reassuring fantasy to think that people work in the sex trade because they particularly enjoy sex; and while some of the women who choose to become surrogates clearly do value the experience of pregnancy, they nearly all say they would not become a surrogate except for the money. It is entirely plausible that markets in other things could develop even in conditions of total equality because of the benefits we can hope to get from specialising in different trades. It is hard to see why markets in body parts or services would arise except where there is inequality. The inequality that attends such markets is not just contingent; it is an intrinsic feature.

Lawrence Cohen reports conversations with kidney recipients in India in which they explain their decision to buy an organ rather than ask family members to donate in the following terms: “Why should I put a family member I care about at risk by asking him or her to donate an organ when I can just buy one?”⁴⁷ At one level, this sounds fair enough: we pay others to do many things we would not risk our own children doing, like fixing the roof and cutting down trees. We do not, however, normally frame this as a distinction between those we care about and those we do not. It is not that we do not care about the roofer’s safety, or even, in this context, that we care more about our own children’s safety, but mostly that we think it better for the work to be done by trained professionals. Unlike the market in roofers and tree surgeons, however, the market in organs seems almost designed to ensure a division of the world into two kinds of being, with the fact of payment relieving the purchasers of any obligation to think themselves into the sellers’ shoes. Donation encourages people to think more explicitly about their moral equality. It encourages the person with two good kidneys to think about what her life would have been like had she suffered kidney failure; and the person with kidney failure to think about what she would have been willing to do had she had two healthy kidneys. A *market* in kidneys encourages purchasers and sellers to think of themselves as beings apart.

This is where the fact of us all having bodies is so pertinent. In the purchase of other kinds of service, we often feel we are buying something we

would never ourselves sell. Perhaps we could not sell it, because we lack the necessary skills or training, or maybe we just find the activity in some way unappealing. It is too risky, perhaps, or too tedious, or too much like hard work. Yet for some even of these activities, it is reasonable to think that the person paid to carry them out views them in a different light: that the tree surgeon is less fearful of heights than I am, and actively enjoys the challenge; that the postman likes getting up early and working out of doors; that the person doing routine office work enjoys bringing order out of chaos, and appreciates not having to think about the work at the end of the day. It would be self-deceiving complacency to think this true of all jobs, to imagine there is someone out there suited to every unpleasant task, or that those doing the jobs I would hate are different enough in their tastes to be perfectly happy in the work. But the variety of tastes and aptitudes is still enough for us to be able to imagine a world organised in such a way as to minimise the number doing work they actively dislike. One might, indeed, envisage it as the appropriate goal of social change that no one should be required to do work they hate. If some tasks are so loathsome that no one would willingly choose them, they should be either eliminated by technological innovation or else shared out.

Willing choice is, admittedly, a capacious category, and since most of us need some incentive to work, even at tasks we find relatively attractive, it could be said that no-one willingly chooses anything. But that would take us to the limit of what we understand by choice, in ways that threaten to deprive the concept of most of its utility. It is not delusional to think that a division of labour can be made compatible with equality. What *is* delusional is thinking that specialising in organ vending could be made compatible in this way.

Markets in human organs rely on a systemic inequality between recipients and vendors that has the effect of denying our moral equality. The fact that it is the body that is up for sale matters, not because our identities are intimately bound up with all the parts of our bodies, but because we all have bodies. If some of us nonetheless become positioned as sellers and others as buyers, the only conceivable explanation lies in our inequality. We can appeal to differences in taste and talent to explain and justify other kinds of specialisation; and while the explanation will often be meretricious (the real reason you clean my house while I write my book is not that you love cleaning, but that I got lucky in my access to education), it remains available as a possible reason. It is not inconceivable that this is the explanation; it is just likely that there are other factors at work, either instead or as well. In the decision to become a vendor rather than purchaser of organs, neither taste nor talent can conceivably be involved. Inequality is the only explanation.

It requires some, but not that much, of a stretch to apply this same argument to prostitution, for while the nature of sex work varies considerably, as do the reasons people give for choosing it, most sex workers are in it for reasons of money not taste, and most clients would not dream of doing it themselves. With surrogacy, the argument is more attenuated, for many surrogates stress the satisfaction they get out of helping gay or infertile couples, and since agencies commonly refuse to take on the candidates who are in the most severe poverty, the income differentials with the commissioning couples are less than they might otherwise be.⁴⁸ It remains the case that no-one engages in commercial surrogacy except for the money. And while the relationship between surrogates and commissioning couples is sometimes impeccably egalitarian, one would be pushed to claim this of the industrial style conditions in India's surrogacy hostels and clinics, or the heavily regulated surrogacy arrangements in Israel. The fact that economic need drives all kinds of employment choices is not a riposte, for my point is not just that people choose this kind of work out of economic necessity, or that vendors are typically poor while purchasers are typically rich. Our entire world is premised on people doing things for money they would not do for love, and on richer people buying what poorer people sell. My point is that an employment choice that is available to *anyone* with a body—or anyone with a body of the right sex, or anyone with a body of the right sex and age—makes little sense outside the context of inequality.

Conclusion

My concern here has been to argue that conceiving of ourselves and our bodies in the discourse of property *is* problematic; and that the body *is* different, even if its specialness is more muted than has sometimes been conceived. We cannot draw what Ronald Dworkin once termed “a prophylactic line” around the body,⁴⁹ nor need we think of it, as St Paul recommended, as “a temple of the Holy Spirit.”⁵⁰ Because we are embodied beings, taking our bodies with us in everything we do, we cannot neatly differentiate those activities that require the body from that that do not, and cannot simply call on a body/not-body distinction to identify which activities or markets particularly violate the self. In recognizing these complexities, however, we should not lose sight of the problems attached to the language of body property, and the powerful arguments against markets in intimate bodily services and body parts.

I have argued that the language we adopt to express our claims to bodily integrity or assert our personal rights matters, and that we would do well to avoid framing these claims in ways that represent the body as property or thing. This is not because this move makes actual commodification more likely (I suspect it does, but have not attempted to prove this), but because the analogy with material resources encourages a dualism that treats body as separable from self. This obscures the power relations involved in any agreement that cedes authority over what is inevitably both. This part of my argument does not, of itself, distinguish contracts involving intimate bodily services from the many uncontroversial contracts for which we also take our bodies along, though the vulnerability associated with any such transfer of authority is self-evidently more risky and troubling when it involves direct access to the body (as in most prostitution agreements) or the regulation of a pregnancy (as in surrogacy). I have represented these differences, however, as a matter of degree. Since my objection to mind/body dualism is that we are embodied selves, I cannot so readily combine this with a claim about arrangements involving the body being qualitatively distinct from arrangements that just involve the mind, for there is nothing that does not involve the body.

I have acknowledged, moreover, the weight of arguments to the effect that it can be hypocritical, even exploitative, to rely on altruistic donation as the alternative to money incentives, and that expecting people to undergo intrusive medical procedures or provide physically demanding services without reward is itself a kind of inequality. My main suggestion here is a distinction between compensation and payment. I am in favour of compensating people for actual costs incurred, and even providing some monetary recognition of their generosity, but not in favour of a market-driven payment reflecting overall supply and demand. This leaves unanswered, of course, some difficult questions about how to set levels of compensation. Since social understandings of worth are shaped by the operations of markets, notions of fair compensation may, in practice, be closely linked to market prices, and this can make the distinction appear even somewhat academic. I recognise the problem, which clearly needs further thought, but do not see it as invalidating the analytic distinction between compensation and market price.

My central argument against body trades rests on what I see as an intrinsic inequality: an inequality both in the economic circumstances that lead some people but not others to offer intimate bodily services or parts of their body for sale; and in the relations of esteem that typically flow from this. In this argument, the body does indeed make a difference, with the specialness of the body lying primarily in the fact that we all have one. Note that this is not

an argument about the distinctive relationship *women* might have to their bodies.

I should clarify, finally, that I do not take my argument about the intrinsic dependence on inequality as justifying the prohibition of markets in body parts or intimate bodily services, while permitting markets in everything else. Like many of those who have written on the body as property or body as commodity, I do not believe one can derive neat policy recommendations from philosophical premises, for these are matters where context makes a difference, and the best possible outcome may involve a complex balancing of different concerns. Even in condemning a market rhetoric that “conceives of human attributes (properties of persons) as fungible owned objects (the property of persons),”⁵¹ Margaret Radin warns that justice may not be best served by banning sales of human organs or sexual services, since for those with few alternatives, selling what little they have may be the only way to a humane existence. Debra Satz ends her work on markets noting that “there are multiple factors to be considered, many values in play. The fact that a market is noxious does not tell us whether we should ban it or attempt to regulate it.”⁵²

The arguments set out here provide only one part of the considerations that would need to be brought to bear in any policy discussion, and one should expect different kinds of recommendation for the different kinds of market involved in prostitution, surrogacy, the sale of human eggs, the sale of human kidneys, and so on. Where markets in bodily services are already thoroughly embedded, as is the case with prostitution, prohibitions that criminalise sex workers are not a desirable policy. Where the question is whether to permit markets in human gametes or the commercialisation of surrogacy, my inclination—as indicated—is to favour some form of compensation, but to draw as clear a line as possible between this and the development of commercial markets. Where markets in kidneys are concerned, I find the point about body markets resting intrinsically on inequality particularly decisive, and my favoured alternative is a well advertised and carefully regulated system of presumed consent, with people actively opting out of becoming organ donors rather than actively opting in. Each of these policy recommendations requires more detailed argument. At this stage, the main point of the illustrations is to clarify that an argument about markets in bodies being more intrinsically dependent on inequality than other kinds of markets is not intended as a knock-down way of settling which markets should be encouraged or permitted. I do, however, claim it as a significant, non-essentialising but also non-contingent, feature.

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Notes

1. J. W. Harris, "Who Owns My Body?" *Oxford Journal of Legal Studies* 16, no. 1 (1996): 55.
2. Rosalind Pollack Petchesky, "The Body as Property: a Feminist Re-vision," in *Conceiving the New World Order: The Global Politics of Reproduction*, ed. Faye D. Ginsburg and Rayna Rapp, 387-406 (Berkeley: University of California Press, 1995).
3. In her discussion of prostitution, Martha Nussbaum argues that the main difference is the stigma attached to prostitution. Martha C. Nussbaum, "'Whether from Reason or Prejudice': Taking Money for Bodily Services," in *Sex and Social Justice* (New York: Oxford University Press, 1999).
4. Julian Savulescu, "Is the Sale of Body Parts Wrong?" *Journal of Medical Ethics* 29 (2003): 138-39. Other cases for relaxing the prohibitions on human organ sales include Janet Radcliffe-Richards, "The Case for Allowing Kidney Sales," *The Lancet* 351 (1988): 1950-52; and Charles A. Erin and John Harris, "A Monopsonistic Market: Or How To Buy and Sell Human Organs, Tissues and Cells Ethically," in *Life and Death under High Technology Medicine*, ed. Ian Robinson, 134-53 (Manchester: Manchester University Press, 1994).
5. Nir Eyal, "Is the Body Special?" *Utilitas* 21, no. 2 (2009): 233-45
6. John Locke, *Second Treatise on Government* (1690): chapter V, section 27.
7. This distinction between property in the person and the body is convincingly argued in Jeremy Waldron, *The Right to Private Property* (Oxford: Clarendon Press, 1988); Donna Dickenson, *Property, Women and Politics* (Cambridge: Polity Press, 1997); and Janet Coleman, "Pre-modern Property and Self-Ownership

- before and after Locke: Or, When Did Common Decency Become a Private Rather Than a Public Virtue?" *European Journal of Political Theory* 4, no. 2 (2005): 125-45.
8. Writing in the 1920s, Georg Lukacs saw the representation of people as owners of themselves as a final stage in self-alienation, the point where the commodity relation "stamps its imprint upon the whole consciousness of man: his qualities and abilities are no longer an organic part of his personality, they are things which he can 'own' or 'dispose of' like the various objects of the external world." Georg Lukacs, *History and Class Consciousness* (London: Merlin Press, 1968): 100 (first edition, 1922).
 9. Nussbaum, "'Whether from Reason or Prejudice'"; see also Debra Satz, *Why Some Things Should Not Be for Sale: The Moral Limits of Markets* (Oxford: Oxford University Press, 2010); Cecile Fabre, *Whose Body Is It Anyway?* (Oxford: Oxford University Press, 2006).
 10. In recent political theory, the idea of the self as proprietor has figured mainly in debates between libertarians and socialists, with G. A. Cohen's long engagement with the arguments of Robert Nozick probably the paradigm case. However, the issues there revolve around the relationship between the rights of the individual and non-contractual obligations to a wider community, without much focus on the body per se. Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974); G. A. Cohen, *Self-Ownership, Freedom and Equality* (Cambridge: Cambridge University Press, 1995).
 11. As Harris notes, "even a child will not confuse the sense of 'my' as between: 'It's my ball!' and 'She's my teacher!'" ("Who Owns My Body?," 65).
 12. A. M. Honore identifies eleven features of ownership, not all of which need to be present for us to say that something is owned by someone. A. M. Honore, "Ownership," in *Oxford Essays in Jurisprudence*, ed. A. G. Guest (Oxford: Oxford University Press, 1961). Donna Dickenson draws on that differentiated understanding of property as a bundle of rights, not therefore necessarily including the right to alienate, to argue that asserting property rights over the body can, in some circumstances, be the way to resist commodification. Dickenson *Property, Women and Politics* (Cambridge: Polity Press, 1997); *Property in the Body: Feminist Perspectives* (Cambridge: Cambridge University Press, 2007); *Body Shopping: Converting Body Parts to Profit* (Oxford: OneWorld, 2009). I address this challenge to my own arguments more fully in *Body Property* (forthcoming, Princeton University Press).
 13. Nils Hoppe, *Bioequity—Property and the Human Body* (Aldershot, UK: Ashgate, 2009): 133.
 14. Moore was treated at the medical centre of UCLA in the late 1970s, where he had a diseased spleen removed. He was recalled on various occasions for tests

- involving the extraction of body substances such as blood, skin, and bone marrow aspirate. Unknown to him, the unusual components of his blood cells were of considerable commercial value and the medical researchers were establishing a T-cell line from these, whose eventual commercial value has been estimated at \$3 billion. The university applied for and was granted a patent, and the researchers involved negotiated lucrative contracts with biotechnology firms. When Moore challenged this, partly on the grounds that he continued to “own” his cells after their removal from his body, he lost the case. *Moore v Regents of the University of California* 51 Cal.3d 120 Supreme Court of California (1990).
15. For a good discussion of Moore and related cases, see Dickenson, *Body Shopping*, chaps. 2 and 6. See also Rebecca Skoot, *The Immortal Life of Henrietta Lacks* (New York: Crown Publishers, 2010), for the story of Henrietta Lacks, whose cancer cells were employed—again, without her knowledge—to grow the first human cells to reproduce outside the human body.
 16. I take this example from Eyal, “Is the Body Special?,” 237.
 17. Harris, “Who Owns My Body?,” 65.
 18. Jennifer Nedelsky, “Property in Potential Life? A Relational Approach to Choosing Legal Categories” *Canadian Journal of Law and Jurisprudence* 4, no. 2 (1990). See also “Reconceiving Autonomy,” *Yale Journal of Law and Feminism* 1 (1989); “Law, Boundaries and the Bounded Self,” *Representations* 30 (1993); “Are Persons Property?,” *Adelaide Law Review* 24 (2003): 123-31.
 19. Ngaire Naffine provides a number of illustrations of this from the literature. To my mind, she effectively challenges G. A. Cohen’s claim that the self in the thesis of self-ownership is merely reflexive, implying no internal division between owner and that which is owned. “The Legal Status of Self-Ownership: Or the Self-Possessed Man and the Woman Possessed,” *Journal of Law and Society* 25, no. 2 (1988): 193-212.
 20. Naffine, “The Legal Status of Self-Ownership,” 202. Influential feminist critiques of mind/body dualism include Genevieve Lloyd, *The Man of Reason: “Male” and “Female” in Western Philosophy* (London: Methuen, 1986); and Raia Prokhorovnik, *Rational Woman: A Feminist Critique of Dichotomy* (London: Routledge, 1999).
 21. Cecile Fabre, *Whose Body Is It Anyway?* (Oxford: Oxford University Press, 2006).
 22. Fabre *Whose Body Is It Anyway?*, 14. Fabre is mainly concerned to make a case for the mandatory—redistributive—transfer of body parts. But in the process, she also defends the right to sell.
 23. Julian Savulescu, “Death, Us and Our Bodies: Personal Reflections,” *Journal of Medical Ethics* 29 (2003): 127-130, 127.
 24. Fabre, *Whose Body Is It Anyway?* 14.

25. Donna Dickenson discusses a troubling case of hand transplant in *Body Shopping*, 141-50.
26. Jürgen Habermas makes a similar distinction between having and being in *The Future of Human Nature* (Cambridge: Polity Press, 2003): 50.
27. Lawrence Stone *The New York Times*, 5 April 1987. He made this comment in the context of debates about whether surrogacy contracts should be enforced. In the fuller quote, he says, "Contracts should be fulfilled. This is rather a bizarre contract, I agree. You're renting out your body. But one expects a prostitute to fulfil a contract." Cited in Carole Pateman, *The Sexual Contract* (Cambridge: Polity Press, 1988): 211
28. Amrita Pande, "Commercial Surrogacy in India: Manufacturing a Perfect Mother-Worker," *Signs* 35, no. 4 (2010): 979.
29. It is in recognition of this last that UK legislation secures to the surrogate mother the right to claim the baby in the weeks immediately following the birth, even when she is not genetically related.
30. These include Margaret Radin, who argues that "systematically conceiving of personal attributes as fungible objects . . . makes actual loss of the attribute easier to countenance" but does not represent the connection as inevitable. Margaret Jane Radin, *Contested Commodities: The Trouble with Trade in Sex, Children, Body Parts and Other Things* (Cambridge, Mass: Harvard University Press, 1996): 88.
31. Carole Pateman "Self-Ownership and Property in the Person," *Journal of Political Philosophy* 10 (2002): 20-53, 33.
32. Pateman, "Self-Ownership and Property in the Person," 33.
33. I am influenced here by Harry Braverman's reading of Marx in *Labor and Monopoly Capital: the Degradation of Work in the Twentieth Century* (New York and London: Monthly Review Press, 1974).
34. Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1999).
35. Radin, *Contested Commodities*, 93.
36. For a disturbing account of surrogacy in Israel, see Elly Teman, "The Medicalization of 'Nature' in the 'Artificial Body': Surrogate Motherhood in Israel," *Medical Anthropological Quarterly* 17, no. 1 (2003): 78-98.
37. Some critics have argued that, in doing so, Pateman represents a woman's sexuality or capacity for motherhood as so integral to her sense of self that the sale of them actually means the sale of the self. While some of her formulations do suggest this, I do not myself see this as crucial to her argument. See Fabre, *Whose Body Is It Anyway?* 172; Satz, *Why Some Things Should Not Be for Sale*, 141; and Wendy Brown, "Liberalism's Family Values," in *States of Injury* (Princeton, NJ: Princeton University Press, 1995). Pateman replies to her critics in "On Critics

- and Contract,” in *Contract and Domination*, ed. Carole Pateman and Charles Mills, 200-29 (Cambridge: Polity Press, 2007). I discuss some of these criticisms in “Free to Decide for Oneself,” in *The Illusion of Consent*, ed. Daniel O’Neill, Mary Lyndon Shanley, and Iris Marion Young, 98-118 (Philadelphia: Pennsylvania State University Press, 2008).
38. David Archard employs something like this in identifying the wrong of rape. Archard, “The Wrong of Rape,” *The Philosophical Quarterly* 57, no. 228 (2007): 374-93.
 39. Richard Titmuss, *The Gift Relationship: From Human Blood to Social Policy* (London: Allen and Unwin, 1970). See also David Archard, “Selling Yourself: Titmuss’s Argument against a Market in Blood,” *The Journal of Ethics* 6 (2002): 87-103.
 40. As Donna Dickenson puts it, “these ova do not just come out of nowhere: they are extracted, in multiple and unnatural quantities, through laborious and risky procedures.” *Property in the Body*, 68.
 41. Dickenson, *Body Shopping*, 86
 42. A review team set up by the UK Government recommended that surrogates be compensated only for actual expenses and the loss of actual—not potential—earnings, but their recommendations were not acted on. Margaret Brazier, Alastair Campbell, and Susan Golombok, *Surrogacy: Review for Health Ministers of Current Arrangements for Payments and Regulation* (London: HMSO, 1998). Commercial and paid surrogacy remain illegal, but when courts judge that it is in the best interests of the child to remain with the commissioning couple, they typically give retrospective authorisation to any illegal payments. Emily Jackson, *Regulating Reproduction* (London: Hart, 2001): chap. 6.
 43. Satz, *Why Some Things Should Not Be For Sale*, 120.
 44. Satz, *Why Some Things Should Not Be For Sale*, 147.
 45. Satz, *Why Some Things Should Not Be For Sale*, 133.
 46. For example, in Arghiri Emmanuel, *Unequal Exchange* (New York: Monthly Review Press, 1972).
 47. Lawrence Cohen, “Where It Hurts: Indian Material for an Ethics of Organ Transplantation,” *Daedalus* 128, no. 4 (1990): 135-65, 161. Kidney sales are now illegal in India, and transplant centres are required to establish that any non-related living donors are acting out of “affection or attachment.” However, this is relatively easy to circumvent. Given the pressures that can be exerted within families on poorer relatives, there is no guarantee that even donors related to the recipient will be acting out of affection.
 48. As noted in Elizabeth S. Scott, “Surrogacy and the Politics of Commodification,” *Columbia Public Law & Legal Theory Working Papers*, Paper 08153 (2008).

49. Ronald Dworkin, "Comment on Narveson: In Defence of Equality," *Social Philosophy and Policy* (1983): 39.
50. 1 Cor. 6:19-20, New King James Version Bible.
51. Radin, *Contested Commodities*, 13
52. Satz, *Why Some Things Should Not Be for Sale*, 210

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