

Repugnance as a Constraint on Markets

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AEI

Proximate Cause

Section 301 of the National Organ Transplant Act

(NOTA), 42 U.S.C. 274e 1984 states:

**“it shall be unlawful for any person
to knowingly acquire, receive or otherwise transfer
any human organ for valuable consideration
for use in human transplantation”.**

Why can't you eat horse meat in a restaurant in California?

1. Short answer: It's against the law.
 - California Penal Code Section 598 states in part "...horsemeat may not be offered for sale for **human** consumption."
2. Longer answer: many Californians find it repugnant that *anyone* should eat a horse
 - and this repugnance was enacted into law, by popular referendum (Prop. 6 in 1998)
 - N.B. no laws against eating cockroaches
 - Today I'll reserve the word 'repugnant' to describe transactions that some people don't want other people to engage in.
 - Eating cockroaches is merely disgusting...
 - But some other words we use and hear, "unfair," "inappropriate" may be referring to something like repugnance

Repugnant transactions (somewhere, or when—the **arrow of time** points in both directions...)

- Human Remains for transplant (or study or exhibit)
 - Cadavers for anatomical study, deceased-donor organs (**e.g. opt in vs. opt out?**), blood and tissue
 - Grave robbers (**mid 1800's**)
 - Museum exhibits (**today**)
 - Live donor organs (kidneys, livers)
- Labor
 - Indentured servitude, slavery (**now repugnant**)
 - mercenary soldiers, conscription, volunteer army,
 - private security firms in Iraq
 - Discrimination on race, gender, handicap, marital status, etc.
- Finance
 - Interest on loans (**no longer repugnant**—except in Islamic world)
 - Short selling, currency speculation

Reproduction and sex

- Adoption (**children may not be purchased**)
- Surrogate mothers, egg and sperm donation, abortion, birth control (**all other reproductive services may be purchased**)
 - Egg donation for research (may not be compensated in MA)
- Prostitution, pornography
- Marriage with bride price, dowry, polygamy, gay marriage
- Risk
 - Life insurance (“insurable interest”)
 - for adults
 - For children?
 - Stranger (or Investor) Owned Life Insurance (SOLI) and “Viatical settlements”—third party markets and funds. (“dead pools”)
 - Gambling,
 - prediction markets (“terrorism futures market”)

- Words and ideas
 - obscenity and profanity (FCC broadcast regulations, movie ratings, 1959 Post Office ban on Lady Chatterley's Lover)
 - blasphemy (e.g. ban on sale of Rushdie's "Satanic Verses")
 - Privacy
- Price gouging
 - After disasters (e.g. Hurricane Katrina)
 - Ticket scalping (ticket auctions)
- Religion/Sports (amateur/professional)
 - Sale of indulgences
 - Endorsements/payments for amateur versus pro athletes
 - Drugs and sports
- Dwarf tossing

Dwarf Tossing

The longest midget toss on record that we could find was made during the British Dwarf Tossing championships of 2002 when Jimmy Leonard of England tossed all 4'4" and 98 pounds of Lenny the Giant a giant 11 feet 5 inches.



Lenny The Giant

Ontario *Dwarf Tossing Ban Act, 2003*

- **Bill 97 2003 An Act to ban dwarf tossing**
- Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:
- **Dwarf tossing banned**
- **1. (1) No person shall organize a dwarf tossing event or engage in dwarf tossing.**
- **Offence**
- (2) A person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months, or to both.
- **Commencement**
- **2. This Act comes into force on the day it receives Royal Assent.**
- **Short title**
- **3. The short title of this Act is the *Dwarf Tossing Ban Act, 2003*.**

Dwarf tossing

U.N. Human Rights Committee backs 'dwarf-tossing' ban (2002)

Manuel Wackenheim began his fight in 1995 after dwarf tossing bans were upheld in France.

- The U.N. case report quotes Wackenheim to the effect that “there is no work for dwarves in France and that his job does not constitute an affront to human dignity since dignity consists in having a job.”
- The UN committee found for France, saying *"the ban on dwarf-tossing was not abusive but necessary in order to protect public order, including considerations of human dignity."*

Repugnance can be hard to predict

- Why is dwarf tossing widely regarded as repugnant?
- It's not just the small size of the dwarfs
 - E.g. jockeys are small

Wife Carrying—Not Repugnant?



Boston champs 2005--traditional



World champs—Estonian position¹¹

Laws can change

- “Cheapest mode of procuring Bodies.—
Resurrection Men”** • *The Lancet*, 3, 61,
27 November 1824, (unsigned letter)
- “The procuring of bodies, for the purpose of dissection, will probably always be considered an illegal act in England...”

Bodyworlds exhibits: 2006





Money and repugnance

- Often $x + \$$ is repugnant, even when x alone isn't.
 - E.g. interest on loans,
 - payments to birth mothers in adoption,
 - prostitution



“We didn’t have time to pick up a bottle of wine, but this is what we would have spent.”

(New Yorker)

“Paired kidney donation” an *in-kind* exchange



Kidney Exchange doesn't excite repugnance

- New England Program for Kidney Exchange—approved in 2004, started 2005.
 - Organizes kidney exchanges among the 14 transplant centers in New England
- Ohio Paired Kidney Donation Consortium, Alliance for Paired Donation (Rees)
 - 60 transplant centers and growing...
- National (U.S.) kidney exchange?
 - Enabling legislation passed the Senate (Feb. 15 2007) and House (March 7, 2007)— now called 'Charlie W. Norwood Living Organ Donation Act', the bill passed both the House and the Senate on Dec 6, 2007, but has still to be signed into law. It says that the valuable consideration clause of the NOTA "does not apply with respect to human organ paired donation."

Money and repugnance

- There seem to be three principal lines of argument about how adding money makes a non-repugnant transaction repugnant:
 - Objectification
 - Coercion (“exploitation”)
 - Slippery Slope

Objectification

- Article 21 of the Council of Europe's (2002) *Additional Protocol to the Convention on Human Rights and Biomedicine, on Transplantation of Organs and Tissues of Human Origin* states "The human body and its parts shall not, as such, give rise to financial gain"

Coercion

- The National Bioethics Advisory Commission (2001), writes that paying subjects to participate in medical experiments may be coercive. They go on to say that, if an institutional review board is concerned that the subjects in an experiment may be economically disadvantaged, it may require, *to protect the subjects from coercion*, that the researchers *reduce the payments they make to participants*
- Note that the NBAC isn't trying to protect the experimental design against the possibility of differential selection among the poor and the rich...

Slippery slope

- Dystopias resulting from changes in terms of trade?
 - E.g. kidneys used as collateral on loans?



"Even though you gave the C.E.O. a kidney, this is a lot of sick days."

Related arguments pro and con on monetary market for kidneys

- Religious scholars:
 - Pope John Paul II: organ donation is heroic, but objectifying human organs is immoral
 - Jewish responsa:
 - Donating a kidney is allowed (pikuach nefesh)
 - It isn't required
 - So it falls in the category of things for which money might be accepted. (Shlomo Zalman Auerbach)
- Economists
 - Voluntary transactions between consenting adults improve welfare
 - Unwanted consequences can be reduced by careful regulation of the market.

Transactions between consenting adults

- Test yourself for repugnance: are you willing to contemplate carefully regulated, sales of live:
 - Kidneys?
 - Eyes?
 - Hearts?

Conclusions: Kidney transplants

- One way that the severe shortage of transplantable kidneys might be solved is if xenotransplants (e.g. pig kidneys) became possible.
 - But they presently face immunological barriers that we don't know how to surmount.
- Another way the shortage might be solved is with a monetary market.
 - But this also faces very real obstacles, in the form of repugnance.
- *I wouldn't want to bet which barrier will fall first.*
- In the meantime, we can bring to bear the tools of market design to increase the number of transplants (through kidney exchange, through ways of managing the DD lists, donations, etc.)

- This doesn't mean economists should give up on pointing to inefficiencies and tradeoffs and their costs.
- Neither should we expect such arguments to immediately win every debate.
- Being aware of the sources of repugnance can only help make such discussions more productive
 - (not least because it can help separate the issues that are fundamentally empirical—like the degree of crowding out of altruistic donations that might result from different incentive schemes—from areas of disagreement that are not primarily empirical).

Conclusions: Repugnance

- Repugnance can be a real constraint. It can change over time, but it can be persistent.
- We need to understand it better.

Further reading

- Roth, Alvin E. "Repugnance as a Constraint on Markets", *Journal of Economic Perspectives*, 21:3, Summer, 2007, pp. 37-58.

<http://kuznets.fas.harvard.edu/~aroth/papers/Repugnance.pdf>