

Repugnance as a Constraint on Markets

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Al Roth

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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”.**

Legal opinion (initially only by the transplant community and now by the DOJ) interprets this as forbidding buying and selling, but allowing exchange (“paired donation”).

Why can't you eat horse or dog 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)

Note: there aren't laws against eating cockroaches

- A big part of behavioral economics focuses on regularities in peoples' tastes that were unmodeled in classical models.
 - Strong tastes for avoiding losses, for fairness, for immediate as opposed to delayed rewards...
- These are largely tastes revealed in choices that people make for themselves.
- My subject today is **tastes that people have concerning choices that other people might make—I'm** going to argue that these have big consequences in what markets we see.
 - This is something I see as a market designer, even for markets and allocation mechanisms more usual than kidney exchange.

- The law against eating horses is different from laws that seek to protect *consumers* by governing the slaughter, sale, preparation and labeling of animals used for food.
- And it is different from the laws that seek to prohibit the inhumane *treatment* of animals, including animals that are routinely slaughtered for food
 - E.g. different from bans on fox hunts and cock fights.
 - It is *not* illegal in California to *kill* horses or dogs, although the California law outlaws such killing “if that person knows or should have known that any part of that horse will be used for *human* consumption.”

Not Just a California Thing: U.S. House Bill

- on September 7, 2006 the House passed, by a vote of 351 – 40, and sent to the Senate H.R. 503 “To ... prohibit the shipping, transporting, moving, delivering, receiving, possessing, purchasing, selling, or donation of horses and other equines to be slaughtered for human consumption.”
 - only one Republican was among the Nays

Horse meat and derived products

Horse meat has nutritional facts and properties superior if compared to any other kind of meat: it warrants high percentage of proteins and iron, with very low fat and cholesterol. That's to say that horse meat fits any kind of alimentary regime, even dietary. Sliced horse meat products like bresaola and carne secca, maintain this good nutritional properties. In salami production instead, horse meat give strenght and character to traditional flavour.



Articolo tratto da: LA CUCINA ITALIANA, giugno 1996



"(...) La carne equina in vendita oggi, invece, è ricavata esclusivamente da animali allevati proprio per questo scopo e non comprende più, come un tempo, muli e bardotti, ma solo asini, cavalli macellati giovani (puledri) o a maturità raggiunta, quando lo sviluppo delle loro masse muscolari è completo e gli animali si trovano in eccellenti condizioni di salute. Nulla a che vedere con gli esemplari vecchi di una volta, che presentavano uno sviluppo

Repugnant transactions

- 5 historically important repugnances
 - Sex (outside of marriage, incest, homosexuality, pornography, prostitution...)
 - Servitude: Slavery and serfdom and indentured servitude, women's (lack of) rights (wasn't so repugnant, now very much so)
 - Worship (Inquisitions, expulsions, heresy, religious wars, **blasphemy**)
 - Interest on loans (was repugnant, no longer so much)
 - Drugs (makes the list because of all the associated crime)
- 5 in flux right now
 - Same sex marriage
 - Don't ask, don't tell in U.S. military..
 - In-vitro fertilization (Nobel prize in 2010)
 - Other reproduction related transactions: surrogacy, eggs
 - Body parts for transplantation—compensation for donors (Kidneys, bone marrow, deceased donation...)
 - Assisted suicide (in England, re Switzerland)
 - Marijuana (in CA...and lots of crime in Mexico) or Finance(? E.g. securitized mortgages...)

It's not hard to find them...

- <http://marketdesigner.blogspot.com/search/label/repugnance>

Repugnant transactions (somewhere, or when)

- Human Remains for transplant (or study or exhibit)
 - Cadavers for anatomical study, deceased-donor organs, blood and tissue
 - Grave robbers
 - Museum exhibits
 - Live donor organs (kidneys, livers)
- Labor
 - Indentured servitude, slavery
 - Volunteer army, mercenary soldiers
 - Discrimination on race, gender, handicap, marital status, etc.
- Reproduction and sex
 - Adoption (**children may not be purchased from the birth mother**)
 - 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

- 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")

- 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")

- Finance
 - Short selling, currency speculation
 - Interest on loans (state usury laws, Islamic banks)
- Pollution markets:
 - Title IV of the 1990 **CleanAirAct** Amendments (tradeable emissions entitlements)
 - Summers' 1991 World Bank memo on dirty industries in LDC's
- 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
- Food, drink, and drugs
 - Horse, dog meat (illegal in CA, but legal in Europe, Asia...)
 - Alcohol (Prohibition)
 - Marijuana and narcotics
- Vote selling, bribery (not ok, but how about frequent flier miles?)
- Dwarf tossing

The arrow of time points in both directions on repugnance of markets

- There are markets that are repugnant today that once were not (or not sufficiently to serve as a binding constraint)
- And there are markets that were once repugnant but no longer are.

Slavery and indentured servitude

- Once both kinds of markets were common in the U.S.
- Indentured servitude was once one of the common ways for Europeans to buy passage across the Atlantic to America.
- Outlawed by 13th Amendment, US Constitution, 1865.
- You can't even sell *yourself* into slavery or indentured servitude.

Lending money for interest

- Once widely repugnant, now not (with the important exception of Islamic law).
- Albert Hirschman paraphrases Max Weber's question in "The Spirit of Capitalism":
 - *"How did commercial, banking, and similar money-making pursuits become honorable at some point in the modern age after having stood condemned or despised as greed, love of lucre, and avarice for centuries past?"*

Credit. Man's Confidence in Man. "Commercial credit is the creation of modern times and belongs in its highest perfection only to the most enlightened and best governed nations. Credit is the vital air of the system of modern commerce. It has done more — a thousand times more — to enrich nations than all the mines of the world." Daniel Webster, March 18, 1834.



Changing repugnancies can interact

- Bankruptcy law
 - In colonial America and in the early years of the Republic, insolvent debtors could be imprisoned, or sentenced to indentured servitude
 - As debt became less repugnant, and involuntary servitude more repugnant, bankruptcy law has come to provide protection to the debtor as well as to the creditor

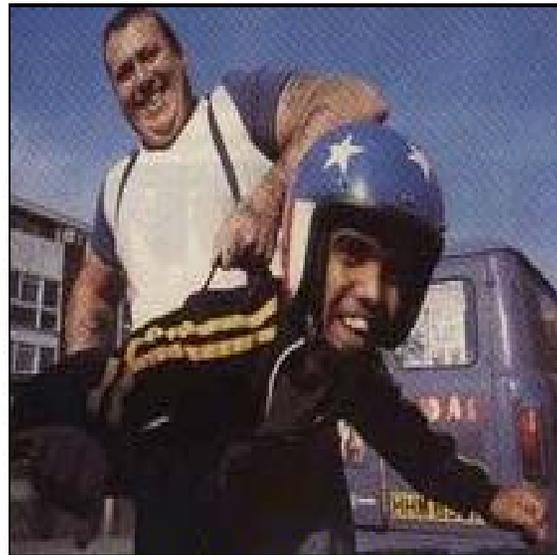
Repugnance is often confounded with other objections

- Negative externalities
 - E.g. prostitution, pornography/obscenity, profanity/blasphemy
- Coercion (e.g. addiction)
 - E.g. alcohol (Prohibition 1917-33); narcotics; gambling; prostitution/trafficking; child pornography
- Incentives
 - E.g. life insurance for adults ('insurable interest'); for children?; viatical settlements and investor-owned life insurance ("dead pools")

“Uncomplicated” cases of
repugnance as a constraint on
markets may help clarify what’s
going on

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."*

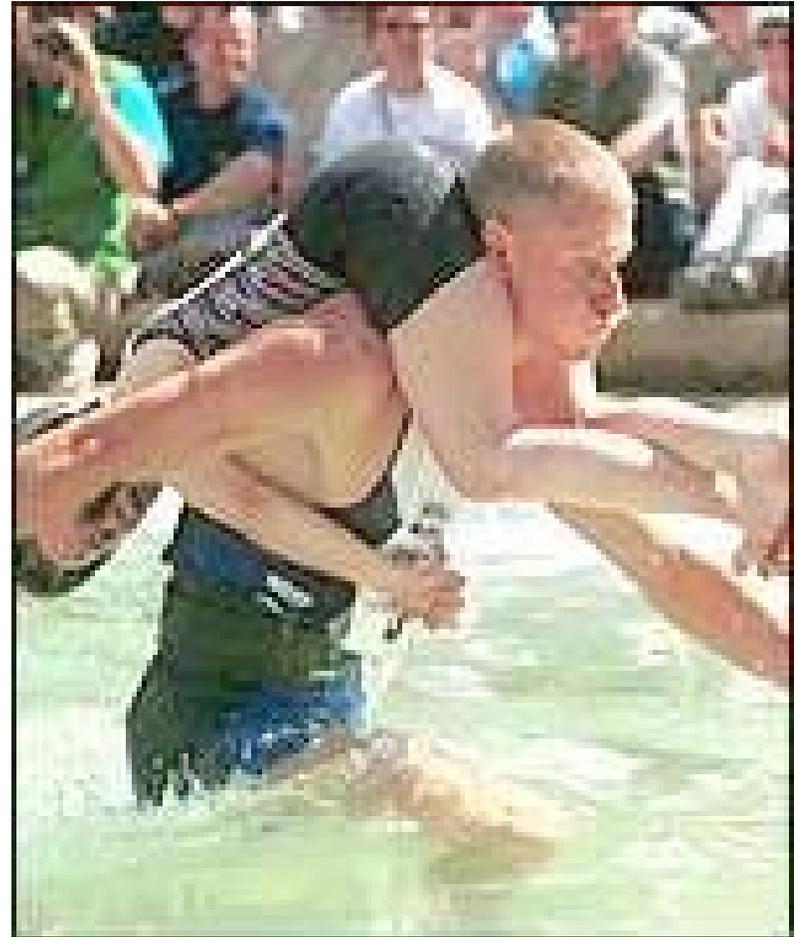
Repugnance can be hard to predict

- But see e.g. Tetlock et al. on taboo tradeoffs...
- 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 position²⁴

Repugnant or not?

- Pollution markets:
 - Title IV of the 1990 **Clean Air Act Amendments** (tradeable emissions entitlements)
 - Summers' 1991 World Bank memo on dirty industries in LDC's
- “Price gouging”
 - After disasters (e.g. Hurricane Katrina)
 - Ticket scalping
 - But TicketMaster is now running ticket auctions
- Kickbacks, bribes, etc.
 - But frequent flier miles are ok.

Reproduction

- Adoption
 - Limits on cash payments to mothers
- Surrogate mothers, egg and sperm donation
 - Largely unregulated markets (cf. Debora L. Spar *The baby business : how money, science, and politics drive the commerce of conception.*)
 - Egg donation for research (may not be compensated in MA)
- abortion, birth control

Cadavers

“RESURRECTION MEN” (editorial)

The Lancet, Volume 1, Issue 19, 8 1824

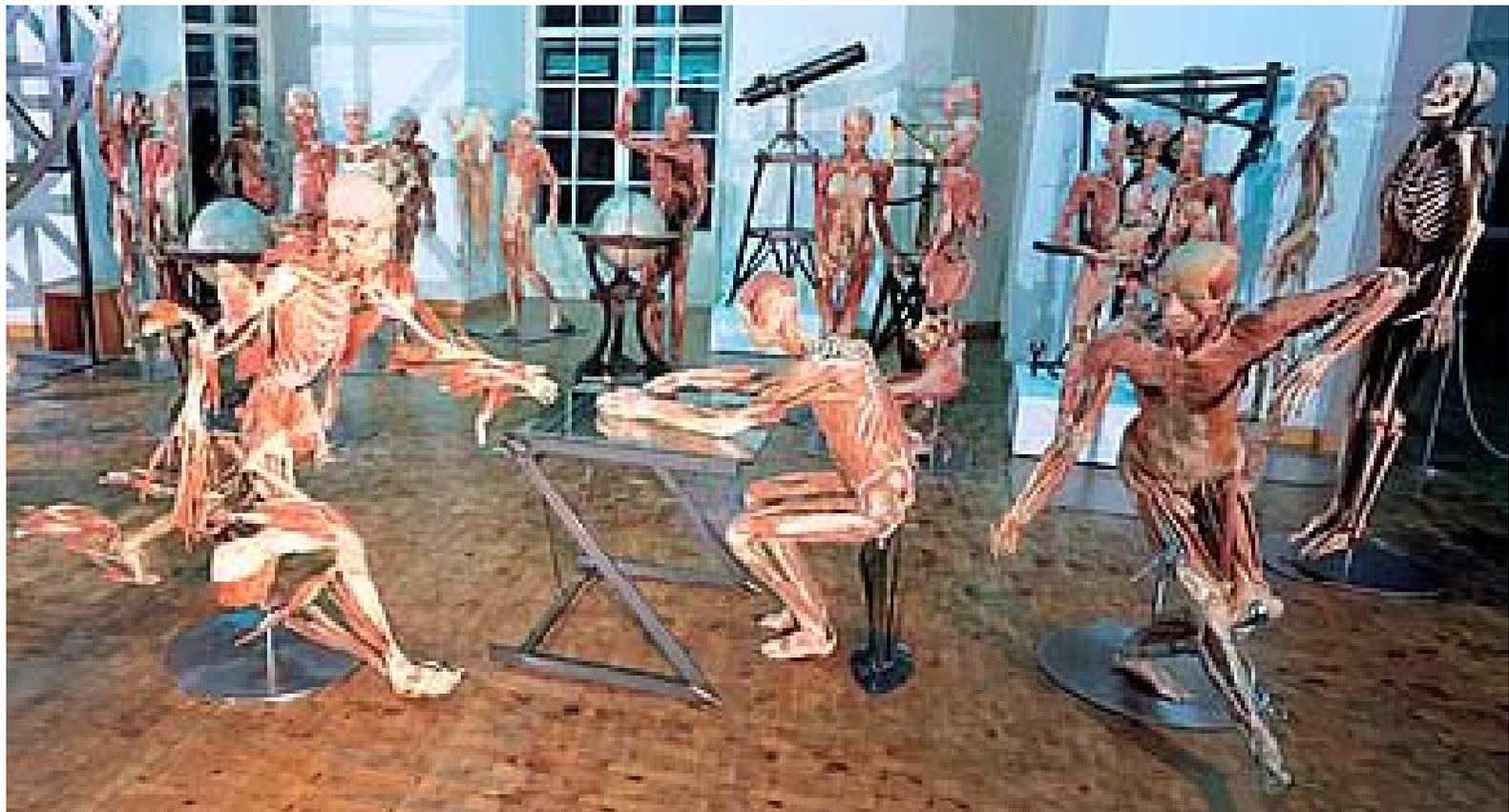
- *Opens with the observation that a resurrection man has recently been sentenced to transportation for seven years, and deploras that it is illegal to obtain bodies for dissection, except executed criminals*
- *“The legislature should be entreated to...devise...some plan that would [make cadavers legally available], and which at the same time would not irritate the feelings of those who are naturally prejudiced against dissection. All that the legislature now does to forward this science...is to give the bodies of criminals executed for murder to be dissected; this we fear...tends to keep up...the prejudice which is at present so strong against the obtaining of bodies for dissection.”*

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...”
- But the **Anatomy Act of 1832** considerably expanded the sources of legal cadavers for dissection.

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

“Taboo tradeoffs” and “Protected Values”

- Tetlock, P.E., Kristel, O., Elson, B., Green, M., and Lerner, J. The psychology of the unthinkable: Taboo trade-offs, forbidden base rates, and heretical counterfactuals. *Journal of Personality and Social Psychology*.
- Fiske, A. & Tetlock, P.E. (1999). Taboo trade-offs: Constitutive prerequisites for social life. In S.A. Renshon and J. Duckitt (eds), *Political Psychology: Cultural and Cross-cultural Perspectives*. London: MacMillan.
- Tetlock, P.E. (1999). Coping with trade-offs: Psychological constraints and political implications. In S. Lupia, M. McCubbins, & S. Popkin (eds.), *Political reasoning and choice*. Berkeley: University of California Press.
- Fiske, A. & Tetlock, P. E. (1997). **Taboo trade-offs: Reactions to transactions that transgress spheres of justice**. *Political Psychology*, 18, 255-297.
- Ritov, I., & Baron, J. (1999). Protected values and omission bias. *Organizational Behavior and Human Decision Processes*, 79, 79–94.
- Baron, J., & Leshner, S. (2000). How serious are expressions of protected values. *Journal of Experimental Psychology: Applied*, 6, 183–194.



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

(New Yorker cartoon.)

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*
- (In contrast, experimental economists often think that paying subjects in economic experiments, based on their performance, is an essential element in creating an economic environment in the laboratory in which the experimenter can exercise some control over subjects' preferences.)

Slippery slope

- Dystopias resulting from changes in terms of trade?
 - E.g. kidneys used as collateral on loans?
- See e.g. Basu (2003) on bans on sexual harassment.

Arguments for and against monetary market for kidneys

Religious scholars:

- Pope: organ donation is heroic, but objectifying human organs is immoral
 - (similar views in Protestant denominations)
- Jewish responsa (e.g. R. Shlomo Zalman Auerbach):
 - 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.
- Islamic Republic of Iran: compensating kidney donors is legal
- Economists
 - Voluntary transactions between consenting adults improve welfare
 - Unwanted consequences can be reduced by careful regulation of the market.

Additional arguments related to kidneys

- “crowding out” of altruistic giving
- Hippocratic oath (“first do no harm”)
 - Nephrectomies aren’t the best part of the transaction, and some surgeons who aren’t wild about them already may feel reluctant to take part if the donor’s interest is commercial.
- Coercion: Even in the absence of money, transplant surgeons are eager to avoid accepting organs from donors who may feel coerced, e.g. by family pressure.
 - Interestingly, Ghods and Savaj, 2006, express the view that the availability of paid unrelated kidney donors in Iran has reduced the coercion of unpaid related donors.

Declaration of Istanbul

Published ahead of print on August 13, 2008

Clinical Journal of the American Society of Nephrology

<http://cjasn.asnjournals.org/cgi/content/abstract/CJN.03320708v1?maxtoshow=&HITS=10&hits=10&RESULTFORMAT=&fulltext=Istanbul&searchid=1&FIRSTINDEX=0&resourcetype=HWCIT>

- “The *Istanbul Declaration* proclaims that the poor who sell their organs are being exploited, whether by richer people within their own countries or by transplant tourists from abroad. Moreover, transplant tourists risk physical harm by unregulated and illegal transplantation. Participants in the Istanbul Summit concluded that transplant commercialism, which targets the vulnerable, transplant tourism, and organ trafficking should be prohibited.”

Gary S. Becker and Julio J. Elias: “Introducing Incentives in the Market for Live and Cadaveric Organ Donations”

- Concluding paragraph:
“But above all, the most effective answer to the critics of paying for organs is that the present system imposes an intolerable burden on many very ill individuals who cannot afford to wait years until suitable organs become available. Increasing supply through payment would largely eliminate this wait and thus enormously improve the efficiency of the transplant market.”
- (Economists see very few tradeoffs as taboo, especially if they’re big enough. And non-economists often decline to discuss tradeoffs at all, preferring to focus on the repugnance of organ sales. We all have to figure out how to supplement our discussion of some of these issues to more directly engage the concerns of those who don’t agree...)

Becker and Elias:

Criticisms and Evaluation of Monetary Incentives

Comparison between “Payment to Living Donors” and “Voluntary Army”

Payment to Living Donors	Voluntary Army
<ul style="list-style-type: none"> • “Commodification” of Body Parts. 	<ul style="list-style-type: none"> • “Commodification” of life. • Worked well.
<ul style="list-style-type: none"> • Mainly Desperate poor donors. • If can help poor, Why bad? 	<ul style="list-style-type: none"> • Poor Man’s Army. • Not really: Healthy poor and middle class.
<ul style="list-style-type: none"> • Difficulty in calculating risks, impulsive. • Low real risks? • Can have cooling-off period, Written Consent. 	<ul style="list-style-type: none"> • Worked here.
<ul style="list-style-type: none"> • Pay does not prevent other motives, such as to help relatives who are sick. 	<ul style="list-style-type: none"> • Can volunteer for patriotism. • And non-monetary motives.
<ul style="list-style-type: none"> • Eliminates “Black Market” in organ transplants: <ul style="list-style-type: none"> - Healthier Conditions. - Better Matches. 	
<ul style="list-style-type: none"> • Save lives of those needing transplants, Improve quality. 	<ul style="list-style-type: none"> • Defend Nation more effectively.

Transactions between consenting adults

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

Regulated Market for Kidneys?

- Single buyer (UNOS?)
 - At above the competitive price (i.e. so more donors would be available than are required)?
- Informed consent?
- Long term health insurance?
- Psychiatric exams?
- Kidneys can't be used as collateral?
- Restrictions on foreign imports?

Opposite of Repugnance: *Protected* transactions

- Home ownership in the US
 - E.g. Federal bailout of Fanny Mae and Freddy Mac (GSEs: Government Sponsored Entities)
- Small farmers
 - Subsidies, price support
- Small fishing boats
 - Daily limits on catch
- Commuting alone in a car
- Marriage: monogamy between a man and a woman?
 - Sometimes protected transactions can conflict with repugnant ones, as in the Federal Defense of Marriage Act, and the Massachusetts challenge to it.

Conclusions: Repugnance

- Repugnance can be a real constraint. It can change over time, but it can be persistent.
- Behavioral economics has mostly been concerned with how individuals make choices. But the manner in which attitudes towards the appropriateness (or repugnance) of transactions shapes whole markets (and therefore shapes what choices people are confronted with) may be one of the important ways that “behavioral” considerations affect the economy.
- We need to understand it better.

Kidney Exchange...

...achieves many of the benefits of a market, without using money, and thus without running into the barrier raised by the repugnance that kidney sales arouse.