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Inequality and markets: a response to Jessica Flanigan

Anne Phillips

In refusing stark distinctions between markets in bodily services or parts and other kinds of market, Jessica Flanigan echoes many of the points I make in *'It's my Body and I'll Do What I Like With It'*. Like her, I see the market in bodily services as one of many markets that rely on inequality. Like her, I recognise that some of those choosing to become surrogate mothers gain satisfaction from their role; like her, I doubt that many sex workers actively enjoy their trade, but note that this choice too may not be driven by economic necessity alone. I agree that the criminalisation of sex work is not a desirable policy option. I certainly do not consider markets in bodily services or parts as unique in involving the body: indeed a significant part of my argument is devoted to showing that we take our bodies with us in all the work we do. As I stress throughout, 'the body' does not provide us with a neat demarcation line telling us which things or activities are legitimately up for sale. Since all activities, including the most seemingly cerebral, involve bodies, some of what is problematic about markets in bodily services or parts will be present in other markets too.

I argue in the essay that commercial surrogacy and sex work occupy the outer edges of a continuum that is, in some way, a feature of all labour markets. All paid employment subjects the body to external regulation and control, and while the regulation is more

extensive and intrusive in activities to which the body is central (sex work and surrogacy, for example, but also professional football and ballet dancing), the vulnerability associated with a temporary loss of authority over our selves remains – and should, in my view, be acknowledged – even in activities to which the body is more incidental. That Flanigan misses – or at least, under-emphasises - this part of my argument reflects, I think, her greater confidence in ‘normal’ labour contracts. If we see nothing particularly troubling in the power relations of everyday employment, and can identify plenty of parallels between everyday employment and sex work or commercial surrogacy, then we will see no special reason to be troubled by markets in bodily services. But if you think, as I do, that there *is* something troubling in the power relations of everyday employment, the parallels tell a different story. In recognising that many of the differences are differences of degree, we become more aware that anyone agreeing to work for another – in whatever sphere of employment - makes herself vulnerable to a loss of personal autonomy. This is not (as I say in the essay) something we can readily avoid, for most of us have to work for others at some point in our lives. Knowing a vulnerability is still better than not realising it exists.

Flanigan does not sufficiently recognise the extent to which my arguments rest on features common to all labour markets, but she is right, of course, that I am arguing more than this. What she focuses on is my claim that ‘more so, and more intrinsically than other markets, markets in body parts or bodily services depend on inequality’. Against this, she argues, first, that the variety of tastes and talents can explain specialisation in the provision of bodily services just as well as it explains specialisation in other jobs; secondly, that I overlook a further important dimension of inequality, the inequality between the fertile and infertile, the organ-rich and those facing the terror of organ failure.

On the first point, I am struck by the way money functions in Flanigan's analysis of tastes. She notes that people have different 'tastes' regarding their organs - that some won't permit them to be re-used even after death, for example, while others donate their organs to strangers - but she sensibly avoids more dramatic claims about some people 'liking' to manage with one kidney and others 'preferring' two. She does not claim that prostitutes have a real taste for their sex work, making only the less contentious point that many have chosen this over worse paid forms of employment. She does say that many women enjoy being pregnant, even without the prospect of raising the child, but does not present this 'taste' for pregnancy as the main reason why women choose to become surrogate mothers. (This is just as well, for as the global trade in surrogacy develops increasingly industrial conditions, most notably in India's surrogacy hostels, that claim would be hard to sustain.) In all three cases, the 'taste' she falls back on is the taste for money. The reason I might choose to specialise in the provision of bodily services or the sale of my body parts, while others pursue different specialisations, is not because of what we normally understand by the diversity of tastes and talents. It is because I have a particular taste for money.

My claim (in retrospect, rather a minimal one) was that in an imagined world of social, economic, and gender equality, it would be hard to conceive of anyone choosing to specialise in kidney vending. Flanigan's claim is that, even in that world, there would be some whose special taste for money - for money over and above what those equal others think they need - is such that selling a kidney becomes a desirable choice. Yet in that imagined universe, what can that 'taste' for money represent other than a taste for inequality?

My own intuition is that in a world of social, economic, and gender equality, we would not find many characters with this particular attachment, but even if we allow for the odd individual with this taste, I cannot see his or her putative existence as justifying the introduction of legal markets in organs. The right to choose cannot be the only consideration here, if only because one person's right to sell can reduce the range of choices available to others. Where kidney markets have been normalised, for example, there is evidence that debt collectors put pressure on borrowers to sell a kidney in order to repay a debt. The opportunity for some to sell then reduces the opportunity for others to refuse to do; more precisely, it still leaves them that opportunity, but reduces their opportunities to borrow.<sup>i</sup> The introduction of a market does not just expand the range of choices; it can also constrain them.

Markets change things, and one of the things they can change is the relations in which we stand to one another. The inequality associated with body trades has, in my argument, two features. There is the material inequality that enables some to be buyers whilst propelling others into selling. There is also the inequality in relations of esteem that is so often associated with this. This is the point of the contrast I try to draw between the ways we might relate to the other in a context of donation (a stranger donating blood marrow or a kidney, but also a relative offering to bear a child for us, or a friend offering to help us out with some sexual malfunction), and the ways we might relate to the other in the context of a sale. Donation, I suggest, encourages us to think more explicitly about our moral equality: to think about whether we would have been equally willing to provide the kidney, the pregnancy, or the sex therapy, had we been in a position to offer this: to hope that, had

things been different, we would have equally generous. A market in any of these things relieves the purchasers of the obligation to think themselves into the sellers' shoes.

This is widely thought of as one of the virtues of markets, and in many ways it is. We do not need to ask whether the baker is male or female, black or white, goes to church or mosque, we just judge by the quality of the bread. We do not have to wish ourselves into the baker's shoes in order to appreciate the skill of the baking. My claim is that the trade in body parts and services differs from this, for while we do not all have either the skill or inclination to become bakers, we all have, and all want to have, a body. When some of us nonetheless become positioned as buyers and others as sellers, we can be pretty sure that material inequality – *not* a diversity in tastes and talents - plays the central role in determining this division. The related point is that body markets do not generate the kind of mutual respect for one another's skills that can accompany other aspects of the division of labour. Precisely because it *is* so difficult to attribute this particular division of labour to a diversity of tastes and talents, those selling the part or service tend to be treated as lesser beings. We have ample evidence of this already from studies of legal and illegal trades in body parts, some considerable supporting evidence from studies of the sex trade, and more ambiguous evidence from studies of surrogacy. As I acknowledge in the essay, this aspect of my argument works best for body parts, somewhat less well for sex work, and less well again for commercial surrogacy. Here, again, there is a continuum, but the existence of a continuum should not absolve us from concern.

The second central point of Flanigan's argument is that fertility services and organ sales (she is less convinced of the necessity for prostitution) are 'jobs that need to be done', and need to be done, moreover, because otherwise there is an unacceptable inequality between the

fertile and infertile, between the organ rich and organ poor. 'This troubling inequality can only be addressed by *expanding* access to lifesaving organs and fertility services.' 'Without organ transplants, thousands of people... die, so this job is necessary.'

I find this a weak argument, for a number of reasons. First, the fact that people die without x does not mean x is necessary: people may die if we do not torture the terrorist for information, but that does not make torture a necessity. Second, normative arguments from inequality need to be addressed at a global, not just local, level, and once we add in the problems of illness and infertility in the global south, it becomes apparent that there cannot be enough surrogates and organ sellers to go around. Proposing the market as the *global* solution to inequality between the fertile and infertile, the organ rich and organ poor, makes little sense; market solutions are only half plausible if we imagine an equal distribution of income and/or ignore significant parts of the world. Finally, and more empirically, there are alternative ways of expanding access to life-saving organs other than legalising markets. Countries with highly developed hospital systems for counselling bereaved relatives (Spain, for example) have significantly raised the incidence of organ donation from the deceased; the numbers volunteering for live organ donation, including to strangers, continues to rise; and if recent medical developments continue, it may soon be possible to use synthetic organs, combined with the patient's own stem cells. This has the additional advantage of reducing the risk of rejection and eliminating the need for immunosuppressive drugs.<sup>ii</sup>

My solution to the problems posed by body markets is not to 'force everyone into unpleasant work, limit compensation for those who do unpleasant work, or eliminate unpleasant professions', though I do suggest, in passing, that if some tasks are so

unpleasant that no one would willingly choose them, societies would be well advised to find ways of either eliminating these or sharing them out. However, the most pressing problems we face as regards markets in bodily services and parts are not really about unpleasant but necessary social tasks. The shortages that Flanigan stresses are in many ways recent creations, shortages made possible by developments in reproductive and transplant technology that have opened up life-saving and life-enhancing prospects for some but at the cost of what is potentially life-risking and life-reducing for others. Further advances in medical technology may solve what will then turn out to be only a temporary, transitional, shortage. But we can be pretty sure that other advances will pose equally troubling dilemmas, opening up yet further prospects for the bodies of some to be employed to sort out problems with the bodies of others. As we move forward on this new terrain, it is worth pausing to think, first about whether we wish to regard our bodies as property, and secondly, about whether sending the body to market is compatible with equality.

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<sup>i</sup> I take this example, from Debra Satz *Why Some Things Should Not Be For Sale* Oxford University Press, 2010: 200-201

<sup>ii</sup> <http://news.discovery.com/human/first-artificial-organ-transplant-110708.html>