

The Bulldozing Fallacy

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ABSTRACT: It is often claimed that trades in contested commodities, like sex, pregnancies and organs, are so harmful, exploitative or disrespectful, that it would be better if access to prostitution, surrogacy and organ trade, should be severely restricted if not outright prohibited. In this paper we argue that a common way of defending this claim rests on a fallacy. Believing that it is helpful to take away a bad, yet preferred, option is to commit what we dub the *Bulldozing Fallacy*. Taking away someone's preferred option will tend to make their situation worse, not better, since in most cases this will coerce them into occupations that they find even less desirable. In this paper we introduce the fallacy and show that it is committed in debates about the sale of contested commodities. Libertarians and economists often take the reasoning behind the Bulldozing Fallacy to provide sufficient reasons to favor legalization of contested commodities. We argue that this is false. There are several potentially sound ways to favor prohibition or regulation without committing the Bulldozing Fallacy. We will discuss under what conditions we might be justified in taking away someone's preferred option.

INTRODUCTION

While most of us believe that computers, food and other commodities can be bought and sold, there are certain goods, like sex, pregnancies and organs, we find troubling. It is often claimed that trades in these goods are harmful, exploitative or disrespectful, and that it would be better if people weren't forced by their difficult and perhaps unfair circumstances to engage in them. The logic is: No one would want to engage in these trades if it were not for their desperate circumstances. They are therefore not really free in the morally relevant sense. It is therefore better if trades in goods like sex, pregnancies and organs is banned, or severely restrained.

We aim to introduce a new methodological tool in applied ethics which we dub The Bulldozing Fallacy. The Bulldozing Fallacy is the fallacy of believing that when people are in a bad situation, so bad that even their preferred option is very bad, we help them by taking away their preferred option. This informal fallacy is often committed in public debates, but also, as we will show, in the academic literature. We argue that in general: Taking away someone's options will tend to make their situation worse, not better, since in most cases this will coerce them into occupations that they find even less

desirable.

Our claim is not that paternalistic policies are illegitimate. We grant that it may be right to interfere to make people better off (see Conly 2012). We explore whether these paternalistic policies are in the interest of the people we are trying to help, as judged from their point of view (disregarding any negative feelings they may have toward being forced not to do what they would otherwise have done). Neither do we make the trivial claim that policies that prevent people from doing what they want to do fail to help people because they always act in their own interest.

We start by introducing a distinction between three kinds of sellers, eager, reluctant and forced. Then we introduce the Bulldozing Fallacy. Thereafter we examine different ways in which this fallacy can be avoided.

THE BULLDOZING FALLACY

Let us start by distinguishing conceptually between three kinds of sellers: eager, reluctant, and forced sellers. Eager sellers are those who would want to sell the specific good, even apart from dire circumstances. In the case of prostitution, this would be sex work activists or sex positive people who enjoy having sex with strangers. In the case of organ trade, this could be utilitarians or effective altruists that want to sell an organ to do something good for the recipient and want to give the money he receives to Against Malaria Foundation or other effective charities.

Forced sellers are those who do not choose it, but are forced. They could be sex slaves or coerced into prostitution by a trafficker who threatens to burn their passport or hurt their family. This could also be someone whose organs are harvested against their will, or people that are threatened to do so, by e.g. the mafia.

The third group of sellers is the most interesting. Reluctant sellers do not really want to sell, but do it nevertheless. This group spans from people in poverty that have few other job prospects than to be a prostitute, or people who sell organs when they lose their job to avoid foreclosure. No-one directly forces them to be a prostitute or sell their organ, but they would not have done it if they did not find themselves in these unfortunate circumstances. Reluctant sellers span from those who mildly dislike it to those who really dislike it.

In the debate over whether contested commodities should be legal or prohibited, legalization-activists often focus on the eager sellers, like the sex positive luxury prostitute who earns more money in a month than she could have done in a year working a “normal” job. Prohibition-activists, on the other hand, often focus on the forced groups, and often tries to blur the boundaries between forced and reluctant sellers, as when prostitutes are considered to be forced by the mere existence of pimps or poverty. In reality there may be difficult to know what group people belong to. We should, nevertheless, be able to agree that all these groups exist. The three groups are intended to be mutually exclusive and jointly exhaustive. Admittedly, some of these groups might be very small. In some circumstances there are very few eager sellers and in other circumstances, almost no one is forced, as we define it here. In such cases the existence of these groups will be less relevant for policy discussions, but that is a different question from the conceptual distinction we make here.

We should be able to reach normative agreement regarding some of these groups. Everyone should be against forced sales. Every time someone is forced to sell sex against their will, this is a tragedy we should seek to prevent. Similarly, we should admit that it would be better for the eager sellers to be able to do what they want to do. There might be reasons why we would not want them to be e.g. prostitutes, but these would not be concerned with the welfare or interests of the eager sellers.¹ Similarly, if a utilitarian want to sell his kidney to do the most good, we cannot plausibly argue that it would be in his or her best interest to block this option. An exception would be if the sale of sex or organs is intrinsically wrong, but we will bracket that objection in this paper.

The interesting question regards the reluctant sellers. We should not doubt that it can be very unfortunate to have to do something you otherwise wouldn't do because you have to pay your bills. Some may strongly dislike to sell sex, but need to do so to pay their rent or to pay of debt. Maybe they have children that need food on the table and few, if any, other job opportunities. They have no real choice, but to sell sex. The question here, however, is whether the pressure involved in these exchanges give us

¹ One such reason may be that we believe that sex sale will gradually turn sex into a commodity in the society in question (Radin 1987).

reason to prohibit them. Will it help the badly off if we prohibit these trades?

Since reluctant sellers will often suffer significant harms, it might be tempting to think that they would be better if they did something else instead. Although this may be true, it does not follow that we help reluctant sellers by keeping them away from the contested trade. To know whether that will help them, we need to know what their alternative is, and the alternative might be even worse. If so, if we prohibit the trade they might be subject to *even greater* harm.

To make our point clear, imagine that the city in which you live has a terrible slum where 1,000 slum-dwellers live in shacks and lack access to clean water and proper sanitation.² The Mayor of the town is very concerned. She looks into the slum-dwellers' situation and finds that living in the slum has very negative effects on the slum-dwellers' health. Although she finds that there are in fact a small number of people who are happy to live in the slum (they are eager slum-dwellers), most of them would rather live somewhere else (they are reluctant slum-dwellers). She is relieved to discover that no-one is forcibly held in the slum (those would have been forced slum-dwellers). Still, she thinks it is unacceptable that there are so many slum-dwellers that would rather not be slum-dwellers, and who suffer as a result of living in the slum. Indeed, she takes it to be deeply unjust that people have to live under such conditions. She therefore calls for bulldozers to flatten the slum. After all the fragile shacks have been torn down, the Mayor proudly proclaims that from now on, no-one in her town suffers from having to live in a slum.

Would you be impressed? We take it that you would not, at least insofar as you were concerned with the well-being of the slum-dwellers. Even though the Mayor might have been right that it is harmful to live in the slum, and that it is unjust that people have to live under such conditions, it is nonetheless evident that flattening the slum does nothing to improve the slum-dwellers' situation. Rather, it is likely to worsen their situation, as it takes away from them what little they have and thus leaves them in an even more desperate situation. The slum-dwellers will now have to live on the street, and

² We here build on Janet Radcliffe Richard's (1996) example of a slum being destroyed, which she introduces (but does not elaborate on). See also Radcliffe Richards et al. (1998) and Radcliffe Richards (2012). Several authors have made similar points, see Savulescu (2003), Dworkin (1994), McGrath (2007), Cherry (2015), Semrau (2017).

presumably, one of the reasons they previously lived in the slum was that they preferred the slum over the street.

The Bulldozing Fallacy is the fallacy of believing that when people are in a bad situation, so bad that even their preferred option is very bad, we help them by taking away their preferred option. We commit this fallacy when we fail to take into account that being denied this option is likely to make them have to choose something even worse. One reason for thinking that it is worse if we take away a choice, is that to sell the good in question in many instances will be the preferred option in a reluctant sellers option range. If we take away that option, he or she will usually be left with options that, in their view, are even less appealing than the trade we are considering. This line of reasoning does not depend on an unrealistic assumption that the sellers are idealized rational actors with perfect information and perfect foresight, as we will demonstrate in the section below. Our claim is negative and comparative, in the sense that even if people act on the basis of imperfect knowledge and may be wrong about what is best for them, we should not assume that they will choose *better* if we remove the option that they would otherwise find most attractive.

The logic is most obvious with slums, but it applies elsewhere, as in prostitution and organ trade. In an article defending what he calls the *Policy of Vigilance*, Vicente (2016, 484) argues that people who are motivated to be prostitutes because they “may need the money simply to survive”, should be restricted from doing so, because they are likely to be harmed if they sell sex. If he is right, however, they will not only be harmed, they will die.

Now, it could be said that by permitting the trade we allow great injustice. We might reasonably think that no-one should have to live like this. Moreover, the reason they find themselves in this unfortunate situation might be because they are not given their due. However, if we want to help those that need to do something that they believe is harmful, the reasonable thing to do is to give the reluctant sellers *more* options to choose from. This would empower them and would do so in virtue of giving them more options to choose from. What will not, in normal circumstances, help reluctant sellers is to delimit their option range even further by blocking the option that they now seem to believe is the best one they have access to. Just as we help slum-dwellers by offering

them housing, not by taking away their shackles, we help reluctant prostitutes and organ sellers by offering them better sources of income (or helping them break bad habits that they must finance through these trades), not by taking away the option that they currently prefer. Granted, if we successfully block their option to sell sex or organs, their problems stop being *prostitution* problems or *organ trade* problems. Recategorizing a problem, however, is not a very helpful move.

Notice that the harm we inflict by removing the allegedly harmful option is not dependent on the provision of better options. If they get help, they have no reason to choose what they now consider a suboptimal choice, thus there is no need to remove the harmful option. And in the absence of help, they are better off by having the harmful option. Banning an option dependent on providing other options is therefore unnecessary and probably harmful, as some reluctant sellers still will prefer the option we deem to be too harmful. This line of reasoning assumes that people are informed about their other options and is sufficiently rational to act on the basis of that information. However, we will explain below why irrationality and lack of information rarely justifies taking away someone's preferred option.³

If we commit the bulldozing fallacy, we face a regress. If we prohibit sex, they will stop selling sex in a regulated market. But now that we got rid of one problem, how do they fare? Well, the most reasonable suggestion is that they do something that is even worse, at least considered from their point of view. They might deal drugs, sell sex in the black market or beg on the street. Granted that they do something that is even worse for them and that we believe in the virtues of the bulldozing strategy, we should help them by taking away this option as well. And so it continues. This is an effective way to stop their very agency. Since we believe that their choices are too harmful, we take away their ability to make the best out of a difficult situation.

The core problem with the views that commit the bulldozing fallacy, is that they overlook the fact that reluctant sellers act, at least in part, for normative reasons. As an example, Vicente (2016, 481) writes that "prostitution is more or less accessible to

³ One could suspect that we also have to assume the non-existence of transaction costs, as people will not move to the better option if the transaction costs exceed the expected benefit from moving. But that would be a mistake. If the transaction costs exceed the benefit of moving, it will not be in someone's benefit to have their current option removed.

everyone: no formation is required; the minimal talent necessary does not particularly restrict access; and one does not have to invest much time or money to start”, and goes on to take this as a reason to believe that people might “end up” selling sex even if they do not have a strong desire to do so, absent the economic incentive. The same argument is often applied to the sale of a kidney (see e.g. Beauchamp 2003). Although this is correct as far as it goes, it fails to take into account that money is not just an *explanation* of why someone sell sex or kidneys; the fact that these trades can give people a significant income without a need for education or other investments are also *prudential reasons* for some people to choose to sell sex or kidneys, just like people in slums live there for prudential reasons. Even when the downsides are severe, a lot of people who are reluctant prostitutes or kidney sellers do so because they perceive the upsides to be more weighty than the downsides.

AVOIDING THE BULLDOZING FALLACY

Many libertarians and economists take the Bulldozing Fallacy to provide sufficient reasons to favor legalization of contested commodities (see Satz 2010, chapter 3 for an overview). This is too hasty. There are several sound ways to take away someone’s best option without committing the Bulldozing Fallacy. We will now sketch some conditions under which we might be justified in taking away someone’s best option.

IGNORANCE

If reluctant sellers are ignorant about their option they may benefit from a ban. In most cases each of us is in a privileged epistemic position with regards to what options we have available and how we rank these options, and are therefore best situated to choose the alternative that suits us. However, we are obviously not fully informed about all the available options.⁴ If there is an option that would have been better for us, but we choose to go with another, we could have been nudged towards the better option if the option we are currently pursuing was not on the table. In the case of prostitution, this condition

⁴ Strictly speaking, what we can plausibly infer from people choosing one option over another is that they ex ante prefer that option to any other they are aware of. What we prefer ex ante is at least partly influenced by the benefits and costs we expect will occur if we choose one option over the others, and we can obviously be mistaken in our expectations.

might be satisfied because a prostitute has better options of which she is presently unaware (perhaps she could, if she applied for it, get a decent paying cleaning job); the jobs she is aware of is better than she thought; and/or because selling sex harms her so much that even a very bad alternative would in fact be better, all things considered. Ignorance can therefore be a justification for banning an option either if the people that engage in them are ignorant about the options available in their option set (*ignorance about the better option*), or they are mistaken about the distribution of benefit and harms between the options they are aware of (*ignorance about benefits and harms*).⁵

However, even in cases where better options exist we cannot take for granted that blocking the preferred option will be beneficial, as it does nothing to make sure that we discover the better option. If we knew about the better option, we would, presumably, have chosen that option already. When our current option is taken away that obviously nudges us towards looking for better options, and this might lead us to discover one, but this is a roundabout and ineffective way of achieving our goal. If people have better options (of which they are presently unaware), then the obvious move is to inform them of their better option, not to block their currently preferred option (Radcliffe Richards 1996: 380). Even if we fail in our attempts to inform them about the better available options, we should not assume that a ban on the harmful option will help. They might be as likely to choose something which we deem to be worse than what they are currently doing, such as turning to crime, selling a kidney on the black market, or suffering from malnutrition.

Another reason to avoid prohibition to benefit ignorant sellers is that it is a blunt tool compared to providing information and regulate the trade. Even if we knew that reluctant prostitutes and organ sellers tend to be harmed by the practice, there will be some that will benefit by having the option available to them. Prohibition will prevent them from choosing the option that is best for them, while giving information and regulating the trade can be targeted at those that will be harmed, without hurting the portion of the reluctant sellers that will benefit from the trade.

⁵ Zwolinski and Wertheimer (2017, 35) suggest such a soft paternalistic justification “for interference with some mutually advantageous exploitative transactions.”

IRRATIONALITY

Another reason for prohibiting a bad option is irrationality. Desperate poverty can lead to temporary cognitive deficits and short-sightedness (Mullainathan and Shafir 2013, Shah et al. 2018) and many reluctant sellers with few other available options to them may suffer from more systematic biases in their reasoning than others. This might have been what got them into the problem in the first place (Beaulier and Caplan 2007). If they act irrationally, in the sense that they fail to do what is in their own interest even when informed, they cannot be expected to choose the better option merely by being presented with relevant information. Perhaps they could benefit if the bad option were taken away.

It is first worth noting that we should not take it for granted that poor people systematically make irrational choices. Although poverty may lead to temporary cognitive deficits and short-sightedness, poverty is also shown to lead people to act more rationally than others. They cannot afford to choose poorly and tend therefore to be on a constant lookout for better options (Duflo and Banerjee 2011, Mullainathan and Shafir 2013). We should therefore be careful before we take for granted, at the level of policy-making, that better options always or even usually exist.

Even if it is true that they act irrationally, we are unlikely to solve their problems with prohibition. If prostitutes really act irrationally, then how do we know that they will not go on to choose something even more harmful if they are denied the option to sell sex? It is only if they have a better option available, and they would choose that option (only) in case their current preferred option is blocked, that they would benefit from such a policy. Although such cases exist we cannot assume that they are the norm.

Whether we should expect reluctant sellers to act irrationally or not, probably depends on how salient the benefits and harms are. The more salient and substantial the harms, the less likely we are to discount them. It seems highly likely that those who “live [the sex involved in prostitution] as continuous violation”, as Vicente (2016, 479) claims, will presumably exit very fast, or, if they don't, they presumably have a really strong reason to stay in spite of their strong dislike of prostitution. These are the people that we could expect would otherwise starve or suffer other very serious harms.

Others might have a more ambiguous relationship with their trade, which may

make it difficult to know if it is worth it or not. In combination with a widespread human tendency of inertia (Gal 2006), these prostitutes may end up selling sex for longer than what is in their interest. While they could have benefited if their current job was removed at the time the costs exceeded the benefits, this seems hardly a good reason for a blanket ban on the trade. Furthermore, if some prostitutes have trouble leaving, the solution is arguably better exit-options, not a prohibition on entering.⁶

However, if the exchange comes with large benefits now and larger harms later, it can take the form of a *trap*. We often discount the interests of our future selves. We are overly optimistic and prefer rewards now, even though it will be costly in the long run (Frederick et al. 2002). When we are faced with upfront benefits and long term harms, we are more likely to behave in ways that we will later come to regret (Mullainathan and Shafir 2013). To sell a kidney might seem like a good idea if you are in desperate poverty and you need the money now, but if you are back in the same situation in a couple of months you may be worse off.⁷ If it was the case that most people in poverty who sold their kidney regretted their decision, that would give us a good reason to protect them from the exchange without committing the bulldozing fallacy (Rippon 2014, Satz 2010, 196).⁸

Without diving too far into the details, we want to note some concerns with using the trap as a justification for a ban. While regret may be a prevalent consequence of kidney sales in black markets (de Jong 2017), we should not assume that this generalizes to kidney sales in regulated markets. The risks involved in legal kidney transplants are not substantial. The risk of mortality is only 3 per 10,000 cases (Lentine and Patel 2012, see

⁶ An exception may be where the reluctant seller ends up self-medicating with drugs to cope with the psychological harms from prostitution. If they then end up with a drug addiction that they need to sell sex in order to finance, this may make “it almost impossible for many to step outside the circle once they have entered” (Vicente 2016, 485). This would be a way to avoid the Bulldozing Fallacy. That some of these will get a drug problem is arguably a big concern for policy, but it is not clear that this should make us favor a policy that prevents reluctant sellers to engage in prostitution. It is first of all easier to get information about benefits and harms in a regulated market, since people can talk more honestly and freely about their work, and governmental agencies, NGOs, researchers and others have an easier time gathering and spreading information. Second, the correlation between prostitution and drug abuse is partly a black market problem in itself, both for prostitution and for drugs, that could arguably be solved if they were regulated properly.

⁷ Satz (2010, 96, and chapter 4) argues that the same may apply to surrogacy contracts.

⁸ Wolff (2006, 13) also considers a trap like structure in relation to markets in safety. Although he does not argue for prohibition, he argues that so called “high fidelity slow release goods”, where the consumer will consume the good at a later stage and the seller have discretion to change the quality of the good over time, should be regulated.

Maggiore et al. 2017 for a recent review of the harms involved). The right regulation may furthermore increase the likelihood that a kidney exchange will significantly benefit the seller. A minimum price may ensure that the seller is fairly compensated, and increase the likelihood that they can solve their financial problems.⁹ And in contrast with the black market, where there is no system for following up patients after they have donated a kidney, a regulated market could provide sellers with top quality health care and regular check-ups, which decreases the chance of harm.¹⁰

Despite these concerns, it should be noted that *The Trap* can, given the right circumstances, be used to justify a ban, or impose strict regulations on certain options, and thus is a way to avoid the bulldozing fallacy.

EXPLOITATION

A third concern is that reluctant sellers, even when they are rational and informed about their options, are taken advantage off. In other words, they are exploited.¹¹ An obvious case of exploitation is if a poor woman runs down a clinique to sell her kidney, so that she can buy an expensive medicine for her child, and the owner of the clinique takes advantage of her situation and pays her way below the market price, knowing that she can't refuse. Even though the deal is mutually beneficial and she consents and is fully informed, the owner does something wrong. If legalizing an exchange makes it more likely that people are exploited or taken advantage of, we could prohibit the exchange to avoid exploitation.

However, it is difficult to see how we can prohibit an exchange to avoid exploitation without committing the bulldozing fallacy. We might say that people have a tendency to ignore or to put too little weight on how bad exploitation is, but this opens it up to the same objections to the claims about irrationality and ignorance that we discussed above. Prohibition to avoid exploitation may also backfire. Black markets are

⁹ If the government is the buyer, this is clearly affordable. In the U.S. it is estimated that every kidney donation saves \$1,4 million per patient in health care costs as the recipient's no longer need dialysis. In addition, the expected gains in terms of longer and healthier lives are estimated to be worth \$1,3 million (Held et al. 2016). In the U.S., a price as high as \$100,000, as suggested by Luke Semrau (2014) is therefore not an exaggerated proposal.

¹⁰ It may even bring an important benefit in itself, in the admittedly unlikely chance that the doctors discover a serious, but treatable disease during the examination.

¹¹ see Wertheimer (1996) and Zwolinski and Wertheimer (2017) for general introductions to the topic.

fertile grounds for exploitation, since the seller does not have the same legal protection as in regulated markets and it is difficult to compare terms.¹² The desperate woman who runs down the clinic to sell her kidney is much more likely to be taken advantage of in a black market. Competitive markets, with the right regulations, labor unions and other fiduciaries that work to promote the weak party's interests, are, in general, antidotes to exploitation.¹³

Although the share and severity of exploitation are larger in a black market than in a regulated market, prohibition may still reduce exploitation if the size of the black market is sufficiently smaller compared to a regulated market. We may be able to reduce exploitation within a given trade by imposing a ban, but even so, the force of the bulldozing fallacy applies. Given that people dislike exploitation and that they tend to avoid it if they have the luxury, a ban may only shift exploitation from one occupation to another. The reluctant sellers might therefore face a worse form of exploitation if they are forced to choose the option that they find second best. To conclude that it is better not to have an option available by pointing to exploitation is thus to commit the bulldozing fallacy.

OPTION-DEPENDENT WORSENESS

A better candidate, which has received a lot of scholarly attention recently, is that the mere existence of the option makes people worse off, perhaps because it creates a pressure on people to do something they otherwise would not do.¹⁴ It is important to distinguish this objection from the claim that obviously commits the bulldozing fallacy. If you live in poverty every new option can in some sense put pressure on you to do something you would not do if you were in a better position. In most cases we do not alleviate the pressure to earn money by taking away options. The pressure for money for

¹² Criminalized prostitution is known to cause several rights violations (Cunningham et al. 2017, Cunningham and Shah 2018, Bisschop et al. 2017). The same is true of black markets in organs (de Jong 2017, 113-116).

¹³ One could perhaps respond that there is a difference between explicitly providing the grounds where exploitation may happen, and exploitation happening as an unwanted by-product of prohibition, and argue that the first, in some way, is worse.

¹⁴ As James Stacey Taylor (2017, 166) argues: "It is possible that if a market in a certain good is permitted a person would prefer to trade in it rather than not, but would still prefer that the market in the good she is trading be prohibited." See also Rippon (2014, 2017), Malmqvist 2014, Koplín (2014, 2017, 2018), Semrau (2015, 2017, 2018). Velleman (1992) presents a closely similar argument against legalizing euthanasia.

food and clothing or to pay debt is there irrespective of the choices we have open to us. Moreover, all else equal, the reluctant seller should appreciate to have more options to choose from when responding to the pressure to increase the household's income or to pay their debt. But under certain conditions, the existence of an option may make things worse than if they did not have the option open to them. It may therefore be better to not have the option at all. We call this *option-dependent pressure*.

This may happen if the existence of the option creates a pressure that make people worse off. A market in kidneys may become a salient way of getting money, which may change the way family, creditors and society at large treat poor people. If so, they could benefit from having the option of selling kidneys removed even if it is the case that once the options are available and the pressure is on, it is rational for them to choose them.

However, we have to be careful not to commit the bulldozing fallacy. Every new option may create a pressure from family, creditors and society at large to do more than we otherwise would have. People do not benefit if we remove all the options they have, to alleviate the specific ways they could be pressured into dealing with the difficult situation they find themselves in.¹⁵ If we do, we face a regress, where we ought to block every way in which we can be useful for one-another. To avoid committing the bulldozing fallacy, two conditions have to be met. It must be especially harmful to be pressured to do the specific trade in question and it must be likely that people will be face such pressure of the option is available.

Rippon (2014, 149) argues that kidney trade fits the bill, and his argument may be extended to prostitution. While it may be okay to be pressured to work in a coal mine, we should not be pressured to sell sex or a kidney, due to the invasive nature of the latter options. It is especially harmful for people to be pressured to accept “physical incursions on the intimate parts of our bodies by other people” which also is somewhat risky. He also argues that people are likely to be exposed to “social and legal pressure”, which in itself is a “significant harm”, to sell their organs to meet their basic needs, pay their debt and be “eligible for bankruptcy protection, or for public assistance.” He further argues that we have no right to impose this pressure on people in poverty (Rippon 2014, 148).

¹⁵ See also Satz (2010, chapter 9, note 27).

Rippon's argument thus satisfies both conditions specified above and therefore has the right structure to avoid the bulldozing fallacy.

To defend removing the option, however, it is not sufficient to point to the harm the pressure causes, or even the right violations it constitutes. We need to show that it is all things considered good for the reluctant seller to have the option removed.

A first concern is that for some people, the pressure does not go away when we prohibit an option. Even though we remove the pressure to sell a kidney or sell sex in a regulated market by prohibiting these trades, people may be pressured to do perform these services in a black market. And for the reluctant sellers that end up selling a kidney or sex anyway, you will be better off selling in a regulated than a black market.

Even if we assume that the ban reduces demand and thereby successfully removes this particular option, this is not necessarily a benefit to the people that would otherwise engage in these trades. When responding to criticism from Semrau (2015), Rippon (2017) concedes that people with many other options may not suffer from having the option of selling a kidney. It is people that have no other harmful options that are harmed. This might be correct, but given these circumstances it is difficult to see how they would be better off if they did not have this option available to them. Rippon (2017) uses an example of a mother who only have two options: "selling my kidney, or selling my child into slavery". It seems like this mother would be glad to have the option open to them, even if she is harmed by the pressure to sell a kidney.

Even in cases where it might be in a mother's interest (in isolation) not to have the ability to sell sex or a kidney to provide for her children, and even if this is, impartially speaking, what is best (as she may have unduly discounted the importance of satisfying her own interests), we might say that it is a mother's prerogative to put her children's interests ahead of her own.

It is therefore crucial that the pressure to engage in harmful trades disappear when the option is removed. Rippon (2014, 148) is afraid that "those in poverty" will have to sell an organ to "be eligible for bankruptcy protection, or for public assistance" and that they could "be legally forced to sell an organ to pay taxes, paternity bills or rent". The availability of the option will therefore make the situation worse compared to a situation without the option. However, to allow kidney exchange or prostitution does

not necessitates that we treat organs or sex as any other commodity. These are political choices. Not only do we have the possibility to avoid these scenarios.¹⁶ It is highly likely that we will for exactly the same reason that Rippon finds kidney trade problematic. Most people believe that it is repugnant to force people to sell a kidney, and is therefore likely to favor regulations that can prevent some of the social and legal pressure to perform these trades.

Even though the pressure to sell a kidney or sell sex is harmful, the benefit one can get from engaging in these trades may make it worth it. This is especially so given the right regulations. A minimum price/wage and good working conditions may increase the benefits involved in the exchange (Erin and Harris 2003, Semrau 2015).

An interesting aspect of the argument for the badness of having an option available is that it may be the people that do not engage in the trades that get the worst deal. If it is true that people in poverty will face a worse situation when the option to sell a kidney or sex is open to them, they could make their situation overall better by engaging in these trades. Those that do not, will only be made worse off because they may be treated worse by their family, creditor and society at large without receiving any benefits from engaging in the trade. This could be construed as an objection about third party harms, which we will return to below, but as it involves the interests of the same persons in two scenarios, one where the contested commodity is legal to sell and one where it is not, the objection is arguably one where it may be beneficial for the potential seller if the trade is prohibited.¹⁷

Another mechanism that has the same structure is caused by the fact that our actions are not performed in isolation. Preferences are partly a product of the society we live in, so the existence of legal prostitution might affect preferences such that more people will consider both selling and buying sex (but the data are unclear, see Kotsadam and Jakobsson 2011 and 2014a, b). If the alternative to prostitution would have been better employment in other parts of the economy, the legalization of prostitution may be a net loss for those that would rather work in other sectors, but now have to work in the

¹⁶ One can also adopt a regionally limited market with a government agency as the sole buyer. As several authors have suggested, given a sufficiently generous payment, one can easily generate a surplus of sellers, and thereby make it superfluous for creditors to demand that kidneys become collateral, and provide the family a plausible reason for why their family member will not be able to donate (Semrau 2014, 2015).

¹⁷ Taylor (2017, 174) makes a similar claim.

sex industry (see Satz 2010). Although this *composition effect* is possible in theory, access to prostitution may also increase income in other sectors as customers work harder. Second, it is close to impossible to predict where the resources would be allocated in the hypothetical scenario. Without a plausible story for how this ban will allocate resources to better employment opportunities for the reluctant sellers, one commits the bulldozing fallacy.¹⁸

EXTERNALITIES

A final way of arguing that it might be beneficial to block the option the sell sex is to appeal, not to the welfare of those who sell sex, but to the welfare of non-prostitutes. Perhaps prostitution is ugly and annoying, bolsters a negative view of women, and/or promotes immorality, and as such has what economists call a negative externality: a negative effect on agents others than those involved in the transaction (Satz 2010, chap. 5 and 6). Or perhaps the existence of a market in organs crowd out altruistic donations, and thereby reduces the amount of donations relative to a system where organ sale is prohibited.¹⁹ Organ trade may also threaten the ideal of citizens having equal status (Satz 2010). Such arguments might provide a coherent rationale for prohibition. If one argues this way, however, one should be honest about the fact that prohibition is likely to harm individual prostitutes, and one should make the case that their harm is a necessary price, and a price worth paying, for the betterment of society. To choose this option is in effect to commit the Bulldozing Fallacy willingly. If the Mayor in the above example were not concerned with the welfare of the slum-dwellers, but rather with making the city look better, her decision to bulldoze the slum, while callous, would not rest on a fallacy.

CONCLUSION

The Bulldozing Fallacy is the fallacy of believing that when people are in a bad situation,

¹⁸ This does not preclude that those that argue for legalization also needs to justify that this will not make people worse of than they would otherwise be (see Taylor 2017 for an argument that they should).

¹⁹ It should be noted that this is a highly implausible claim. Data from Iran, the only country that has a regulated kidney market, and common sense implies that a market will better provide for organs than a system for donations. Few people donate organs to strangers, and there is a significant scarcity of organs. However, a market in organs will at least make the possibility of being an altruistic donor illusory in the eyes of many, as they will now become suckers if they give up for free what other can perform for money (Dworkin 1994)

so bad that even their preferred option is very bad, we help them by taking away their preferred option. But it is only a fallacy if people do not have a plausible story for how it can be better to remove someone's preferred option.

The most important point is that those that argue for prohibition on the grounds that this will benefit reluctant sellers need to provide a comparative case.²⁰ To demonstrate that prostitution is especially harmful compared to other trades, like office jobs etc., or that people that normally engage in prostitution is especially uninformed or irrational compared to other people, it is not enough to show that they will be better off if we take away their best option. We need to demonstrate that it is plausible that they will end up doing something that is better for them.

We hope that by identifying The Bulldozing Fallacy we can help move the debate over prostitution and organ markets forward. The fallacy can also be applied to other areas, such as debates about surrogacy, sweatshops (Miller 2003, Zwolinsky 2007), research ethics, euthanasia (Velleman 1992) and perhaps child labour (Satz 2010, chapter 7). The general point that is emphasized by the fallacy, irrespective of where it is applied, is that we may not conclude from the fact that someone's preferred option is very bad that they would benefit from having this option removed.

The fallacy does not only apply to prohibition or blocking an option. It also applies to taxes and other burdens imposed on options we believe are harmful.²¹ One could e.g. argue that the government should tax or in other ways make harmful actions more costly, so that these harmful actions will be less appealing.²² This argument has an obvious appeal. We tax the things we want less of and subsidize the activities that we want more of. If prostitution is harmful, it makes sense to make it more costly, so that other options will be relatively more appealing. For this argument to succeed in these cases, however, it needs to be supported by other arguments, like ignorance, trap etc. Otherwise would it, in effect, be parallel to arguing that since UN food rations are not very delicious, we should make the packages very difficult to open so that fewer people will find themselves in the unfortunate position of eating them. Moreover, for those that still believe that selling the contested commodity is the better option after we have made

²⁰ Semrau (2017) makes a similar point.

²¹ As argued by Radcliffe Richards (2012).

²² James Stacey Taylor, *Markets and Justice*, 2018, Aarhus

it more costly, will only find themselves more harmed.

The bulldozing fallacy puts the burden of proof on those who are for prohibition on the basis of some activity being harmful, invasive, pressure or the actors lacking other options. They need to show that it is better that someone loses the option they would otherwise have chosen. We have sketched various strategies one should be expected to employ. There might of course be others. But this shifting of the burden of proof onto those that want to argue for prohibition or strict regulations, those not give the legalization-camp a free pass. To make the case for legalization one should be expected to show that the objections are not met. It is not enough to stipulate that it always will be better to have more options.

The strongest case for prohibition or strict regulation will obviously be where we can demonstrate that one or more of the objections are so strong that the pro tanto case for legalization is overruled. A less obvious point is that even if no objection alone is enough to show that the pro tanto case does not hold, the objections can in sum overrule the pro tanto case.

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Contested commodities, noxious markets

- We will introduce the Bulldozing Fallacy as a methodological tool. It is the fallacy of believing that...
- In this paper we will focus mainly on sexwork, but our aim is to say something more general about “noxious markets.” Occasionally, we will refer to the debate about organ sales.

- We will first distinguish between eager, reluctant, and forced. Then we will introduce the fallacy. Then we will look at ways of responding to the fallacy. Then we will look at arguments for blocking trades that do not commit the Bulldozing Fallacy.
- Example with prostitution.
- Eager, reluctant, forced.
- Bulldozing.
- This offers a *pro tanto* case. But not an *all things considered* case.
- An offer you cannot refuse. An offer that you are forced to accept or an offer that you would be really stupid not to accept.
- We do not want to be opposed to all ways to make money, simply in virtue of them being ways to make money.

For the end:

- Stuff about this being independent of distribution, etc., which Aksel placed in the introduction.