Introduction

This is a book about markets, bodies, and property. It considers what, if anything, is the difference between markets in sex or reproduction or human body parts and the other markets we commonly applaud. What—if anything—makes the body special? People otherwise untroubled by the workings of market society often oppose commercial transactions in what we might call intimate bodily services or body products and parts. But can we justify what Nir Eyal terms “body exceptionalism”?1 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?

In exploring these questions, I continue arguments opened up in a number of recent contributions, including Margaret Radin’s Contested Commodities, Debra Satz’s Why Some Things Should Not Be For Sale, and Michael Sandel’s What Money Can’t Buy.2 I share with all three of these the view that some things should not be for sale, and that it is not transparently obvious either why this is so or which these are. I share with the first two a feminist-inflected focus on the body. I consider, however, not just markets and the body, for I am also concerned with the implications and consequences of thinking of the body as something that we own. I examine cases of body commodification, focusing on commercial surrogacy and markets in body parts, but I also consider instances where thinking of the body
as property has no obvious implications in terms of making it available for sale. My main example of this latter is what happens to our understanding of rape when the body is conceived as property and rape as a property crime. Thinking of the body as property potentially minimises its significance to our sense of who we are, and in many contexts accustoms us to thinking of it as a marketable resource. There is, however, no inevitable line of determination between adopting the metaphors of property and sending the body to market, and there is some evidence—discussed later—that those engaged in body trades resist the language of property. The book addresses, therefore, two distinct though related questions. What, if anything, is wrong with thinking of oneself as the owner of one’s body? What, if anything, is wrong with making our bodies available for rent or sale?

There is currently an international consensus that bodies are not property, and that neither human bodies nor human body parts should be traded as commodities. Slave markets are repudiated in every country in the world, though not entirely eliminated. Markets in babies are also illegal, though in academic debate at least, they not so entirely repudiated.\(^3\) Marriage markets are challenged by a variety of human rights conventions that stress the rights of individuals to determine for themselves when and whom they marry. In these instances, what is being banned is the trade in someone else’s body, but governments around the world also ban trading in one’s own. That the kidney or cornea is yours (it clearly isn’t anyone else’s) is regarded as beside the point, and while there is a thriving global market in live human organs,\(^4\) this is almost entirely illegal. Sales of human gametes are legal in some countries but banned in others. Regulation of prostitution and commercial surrogacy\(^5\) also varies, with some jurisdictions treating both as illegal, others criminalising one but not the other, and others still treating both as legitimate markets. Even
allowing for these variations, there is clearly a perception that the body being yours is not enough to legitimate its trade. The body *is* yours, but that does not make it property, and does not give you the automatic right to determine whether to rent out or sell.

Why not? What justifies these restrictions on free individuals choosing to trade in their bodies and body parts? Do they depend, perhaps, on religious notions of the body that cannot now—indeed never could—be regarded as universally shared? Can we continue, moreover, to justify the restrictions in a world where innovations in medical and reproductive technology create an ever-increasing demand? Prostitution has been with us for millennia, with arguments swirling backwards and forwards as to whether it should be legal, but it is now joined by more widely approved activities, where the burning issue is not so much whether they should be permitted, but whether they should be traded and paid. In vitro fertilisation has opened up unanticipated opportunities for the infertile to deploy someone else’s body to carry an embryo to full term: most countries permit “altruistic” surrogacy, but many ban its commercial form. The success of complex transplant operations has created a use for, and thereby a shortage of, human body parts: though the Catholic Church was, for a time, opposed even to altruistic donation, the donation of human organs to save and extend life is now widely approved, but not their sale. Stem cell research currently depends on supplies of human ova: here, there is considerable opposition even to the research, but the difficult additional question is whether we should turn to the market for a steady supply of these eggs.

Developments in medical and reproductive technology have enabled many generous examples of donation: women acting as surrogates for their infertile relatives or friends, organ donors undergoing intrusive and potentially dangerous operations in
order to save the lives of complete strangers, and women vol-
unteeing access to their ovaries in order to assist the infertile or further medical research. But donation falls considerably short of the demand, and a growing number of commentators argue that restrictions on body trades should be lifted and that those who wish to should be allowed (openly) to sell. In the United Kingdom in 2011, there were seven thousand patients waiting for a kidney transplant, and only one in three of these was likely to be offered the operation in time. The number willing to donate live kidneys continues to rise, but is still below a thousand (again, my figure is from the United Kingdom), and only a further fifteen hundred organs are likely to become available through the death of a donor. In countries where markets in human gametes are banned, there is a similar shortfall in the supply of eggs. If monetary incentives can increase the supply—thereby enhancing and saving lives—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?”

In the seventeenth century, we might have called on religion to answer this question. When John Locke made his classic statement about every man having “a property in his person,” he did not understand this as implying that men owned their bodies, and certainly not as conveying their absolute right to do as they wished with their bodily parts. 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. Although people do still call on this argument to explain why the body is special, it is no longer so generally available. We cannot so readily regard the body as God’s property, or think of it, as St. Paul recommended, as “a temple of the Holy Spirit.”

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Nor can we so readily rely on the later Marxist critique, which stressed the dangers of unbridled commodification and the alienation involved in thinking of oneself in property terms. Precisely because of that rampant commodification, many goods and activities previously regarded as outside the market are now routinely bought and sold. The fact that something used to be exempt no longer carries such weight. One might take a principled stand against the commodification of anything that has so far managed to remain outside: I confess to some unreconstructed tendency in this direction. But with the remarketisation of so much that had come to be run as public services (the selling off of state-run utilities, the privatisation of public hospitals and schools), and the commodification of so much that had been thought of as nonmarket (the commercialisation of feeling, for example, analysed in Arlie Hochschild’s *The Managed Heart*), it is not so obvious why the commodification of the body should fall into a category apart.

Appeals to feminism also have their problems, for while feminism provides many resources for challenging notions of the body as owned—resources I address more fully in chapter one—it also alerts us to the difficulties in singling out markets in bodies from other kinds of markets. My own arguments are framed by feminism, and while the book is not an intervention in exclusively feminist debates, my approach to markets, bodies, and property is very much shaped by feminist politics and literature. I am inspired by that literature to query the mind/body dualism that often accompanies the case for markets in bodies. The frequent feminist insistence on recognising ourselves as embodied beings also, however, discourages us from thinking that “the body” can provide a clear demarcation line telling us which things or activities are legitimately up for sale.
If all activities, including the most seemingly cerebral, involve bodies, some of what is problematic about markets in bodily services or parts is going to be present in other markets too.

Agency and Coercion

These difficulties explain, I think, why much of the critique of prostitution or the trade in human body parts has focused on coercion by people or economic circumstance, and why much of the critique of surrogacy contracts has focused on the difficulty of knowing, at the beginning of a pregnancy, how you will later feel about the requirement to relinquish a child. In current political discourse, prostitution is sometimes treated almost as synonymous with sex trafficking, as if all those who enter sex work for a living are tricked into it by lying go-betweens, or have been kidnapped and imprisoned and forced to engage in the trade. Sex trafficking and sex slavery undoubtedly exist, and I have no quarrel with national and international initiatives that enable people to escape these conditions and prosecute those responsible. (Although I would quarrel with the tendency then simply to deport the “victims.”) But the blurring of boundaries between prostitution and sex trafficking, and the seeming desire to consider all sex workers as victims of trafficking, understates the agency of those who decide to work in the sex trades and makes the existence of coercion the central, perhaps even only, concern. If people are tricked or forced, then prostitution is self-evidently wrong. But what if people understand what they are letting themselves in for and take on the work in full knowledge of what it entails? Are we then left with no basis for critique?

In the illegal trade in body parts, there is also considerable trickery and deception: cases in which people wake up from a
routine operation to discover that an organ has been removed without their consent, or agree to the removal of organs for transplant but under false assurances about the risks. Without exception, there is also economic coercion, for it is the coerciveness of a pressing economic need to repay a debt collector or finance a child’s operation or give one’s children a better start in life that leads people to this course of action. For most critics, these are the reasons for objecting to the trade: the trickery, deception, the failure to provide adequate after care to those who supply the organs, and the extreme economic need that propels them into the sale. But, again, what if we could envisage different circumstances under which all parties were fully informed of the risks, everyone had access to a decent minimum income, and yet some people still expressed their willingness to sell a spare kidney or cornea? Would there be any remaining basis for condemning this trade?

In *What Money Can’t Buy*, Michael Sandel distinguishes two categories of objection to markets: the fairness objection and the corruption one. In the fairness objection—which roughly parallels what I am calling coercion—the problem is that some so-called choices are not truly voluntary, perhaps because of trickery and deception, but more often just because of background inequalities of bargaining that “coerce the disadvantaged and undermine the fairness of the deals they make.” People will differ in how seriously they take Sandel’s objection, and the more hard-headed among us may say that all deals are made against unequal conditions, and that so long as the parties to them agree (are not tricked or deceived), they are all getting something they want. That some may get more out of the deal than others is, from this perspective, beside the point. What Sandel stresses is that the fairness objection does not exhaust all the possible problems with a market. Even if a society has
established fair bargaining conditions, there can still be, he argues, some things that money should not buy. This second, corruption, objection “focuses on the character of the goods themselves and the norms that should govern them.” He argues that the nature of some goods is diminished, degraded, or demeaned (terms he employs extensively in the book) when they are made available for sale.

I, too, think there is more at stake than whether people are making their decisions under fair bargaining conditions, and that even contracts fairly entered into can still be problematic. Choice does not legitimate everything, and the free choice of the individual cannot be our only moral touchstone. Ironically, making choice the central concern may lead to a denial of people’s agency, for if the only grounds on which an activity can be regarded as unacceptable is that people did not voluntarily choose it, there will be a temptation to understate the extent to which they knew what they were doing. If anything freely chosen is legitimate, then anything considered illegitimate cannot have been freely chosen: we may simply fail to recognise people as agentic individuals when what they “choose” to do falls too far outside our comprehension. This has been a problem in the analysis of prostitution, where those most critical of the practice have tended to represent sex workers as the overwhelmed victims of an all-powerful patriarchy; it has been a problem in the analysis of commercial surrogacy, where the key fallback position for those questioning the practice is that surrogate mothers cannot really know what they have agreed to until the baby is born; it is a problem in the analysis of the trade in human organs, where the vendors become faceless victims and their agency disappears. The better assumption is that everyone has agency, and that while people are more or less well informed, more or less constrained by circumstance, facing a larger or
smaller set of alternatives, the vast majority of us are thinking agents who make a choice. We need, as Carol Wolkowitz puts it, to be able to distinguish between “the agency that everyone has, except in the most extreme conditions, however curtailed and constrained,” the agency “exercised against the grain of lines of domination,” and the agency involved in processes of progressive social transformation. The degree of voluntariness remains relevant: the fact that everyone has agency does not deprive us of the capacity for criticizing conditions in which its exercise is particularly constrained. But like Michael Sandel (and Carole Pateman and Debra Satz and many others), I do not limit my social critique to the question of whether people freely chose.

I don’t, however, find Sandel’s corruption argument especially convincing. In his argument, goods have particular moral meanings, and their commodification is problematic when it involves treating them “according to a lower mode of valuation than is appropriate” to them. There are many ways in which this could be applied to the body. We could say that human dignity is bound up in the way our bodies are treated; we could say the body is the temple of the Holy Spirit; we could say our identity as humans is bound up with our sexuality; we could say our identity as women is bound up with our capacity for reproduction. But just listing these makes it clear how very contested any such “valuations” will be. People do not agree on the moral meaning of the body, sex, reproduction, kidneys, blood, semen, or genes. So far as the body, moreover, is concerned, the fact that we uncontroversially send our bodies to market every time we agree to work for someone else makes it harder to locate a moral meaning in “the body” that could differentiate between problematic markets in intimate bodily services and unproblematic markets in anything else.
We All Have Bodies

The arguments I develop in this book rely partly on there not being such a stark divide. I argue, that is, that markets in sex or reproduction 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. While the regulation is more extensive and intrusive in activities to which the body is central (sex work and surrogacy, but also, as Martha Nussbaum reminds us, professional football and ballet dancing\textsuperscript{17}), the vulnerability associated with even a temporary loss of our authority over our bodies and selves remains—and should be more widely acknowledged—in activities to which the body is more incidental. It is not that selling sex or one’s capacity to bear a child is so entirely distinct from any other kind of paid employment. Indeed, one of the lessons we can take from the analysis of the trade in intimate bodily services is the need to focus more closely on the embodied experience of all paid labour.\textsuperscript{18} 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, and that she experiences this vulnerability through her body. In some areas of employment, the bodily experience is so negligible we barely notice it. In others it poses significant issues regarding health and safety at work. In others still, the regulation of the body and management of the emotions reaches what we should consider unacceptable levels. That there is a continuum does not mean we have no basis for criticising what is positioned on the outer edge.

But I also want to make a stronger argument that revolves around the fact that we all have bodies, and what I see as the
implications of this otherwise banal fact for equality. Bodies function in my argument as that which reminds us of our shared vulnerability, that which alerts us to the common experience of living as embodied beings in the same world. Our ability to think of others as our equals is, in my view, very much bound up in our capacity to see those others as like us in at least some respect. One crucial way in which we are alike is that we all have bodies. The point, then, at which some people's bodies become the means to patch up the bodies of others—most dramatically, in the use of one person's body parts to save or enhance the body of another—is going to be deeply threatening to equality, and it is this, more than anything, that makes sense of the distinctions commonly made between donation (good) and sale (bad). There is a difference between the ways we might relate to the other in a context of donation—think of the stranger donating blood marrow or a kidney, but also the relative offering to bear a child, or even the 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 encourages us to think more explicitly about our equality: to think about whether we would have been equally willing to provide the kidney, the pregnancy, or the sex, had we been in a position to offer this; to hope that had things been different, we would have been equally generous. A market in these things relieves the purchasers of the obligation to think themselves into the sellers’ shoes. It occludes the equality that is otherwise expressed in the fact that we all have bodies.

All having bodies also functions in what may seem a more standard sense, highlighting the inequality that is an inescapable component in markets that depend centrally on the body. The argument I make here is not, however, just a version of Sandel’s fairness objection; I am not claiming that no decision to
trade in the body can be understood as voluntary because of the background inequalities. Inequality is a feature of many markets: we sell because we don’t have enough; others buy because they have more. Yet a social division of labour would remain even in an imagined world of social, economic, and gender equality, because some, at least, of the social division of labour reflects differences in skills and preferences that lead you to specialise in one activity and me to specialise in another. We can tell a plausible tale about many specialisations that need not depend on the fact that you are rich and I am poor. But given that all of us have body parts, that most women of childbearing age can do pregnancy, and that most of us can do sex, what—other than the inequality—explains why some become positioned as buyers and others as sellers? This is a division of labour that is intrinsically linked to material inequality, not just (as with many other markets) contingently so. We could, at a stretch, say that those with two healthy kidneys have the “skill” to sell one, while those with malfunctioning organs lack the ability, but we could not plausibly claim that some people “prefer” to live with one kidney while others prefer to have two. When one person sells and another buys, inequality is the reason. The argument is somewhat more strained as regards surrogacy, for it is not entirely implausible to say that some women enjoy being pregnant while others either cannot or prefer not to be so, but as the global trade in surrogacy develops increasingly industrial conditions, most notably in India’s surrogacy hostels, relying on “preferences” to explain the division of labour looks pretty unconvincing. As for prostitution, it is reassuring fantasy to imagine that sex workers have an unusual taste for sex with unknown and unchosen partners; they may indeed choose the job over others less well paid, but we cannot plausibly say they choose it because of their preferences and skills.
Property: “Good” and “Bad”

Reading the literature today, on the body as property, and the sale of bodily services and parts, I sense a hardening of resistance to notions of the body as special and greater accommodation with both literal and metaphorical commodification, including among those who would describe themselves as radical and/or feminist. Straws in the wind include the “new commodification” theorists, who argue that putting a price on things previously deemed untradable can shift power in the direction of the socially and politically marginal, and a growing body of work that represents claims to the ownership of one’s body or person as the means through which the average citizen can challenge the power of biotechnology companies. Commenting on trends in commodification theory in her afterword to a recent collection on Rethinking Commodification, Carol M. Rose observes that “some commodification theorists are at least somewhat more comfortable with markets, and more intrigued with the market’s possibilities for novelty, liberty, and self-fashioning—not to speak of money.” In some of these arguments, commodification itself is presented as a source of power; in others, it is the power of property that is defended, often precisely as a way of preventing commodification.

In this latter argument, seeing the body as special, or treating claims to body ownership as a travesty of our human dignity, deprives people of important protections against the market. In both English and North American jurisprudence, it has become a guiding principle that no one owns the body; that heirs cannot therefore claim property in dead bodies or body parts; that coroners have the authority to insist on burial or, in cases of postmortem, postpone it; and that people seeking to claim property rights in their own bodies are crossing an
unacceptable line. Property rights in body parts or tissues have been recognised when someone subsequently exercises labour on it—when a technician treats and preserves part of a corpse, for example, for use as a medical specimen, or a researcher for a large company uses it in research—but for the poor source of that body part, there is no recompense. Many today see this refusal to acknowledge property rights in our bodies as leaving us with too little protection against medical malpractice or the rapacious activities of private companies. From this perspective, we need more property in the body, not less.

That property protects is one of the key claims commonly made on its behalf, and there is a long tradition of radical thinking that sees the assertion of property rights in one's self and one's body as the central challenge to slavery and a crucial part of establishing women as the equals of men. Slaves were not regarded as owning their own bodies: they did not have the right to refuse the sometimes impossible demands made upon them, they did not have the right to refuse intimate access to their bodies, and they had no legal recourse if their bodies were damaged or destroyed. Being able to assert ownership of one's body therefore disrupted the very foundations of slave society. In nineteenth- and much of twentieth-century Europe and America, nonslave but married women were also regarded as having no right to refuse their husbands access to their bodies (marital rape was not a crime), and for much of that period, married women were not regarded as capable of holding property in their own name. Being able to assert the right to own property, and, again, the ownership of one's body, proved crucial moments in women's mobilisation for equality. Property has a radical as well as conservative history. My claim, nonetheless, is that framing bodily rights as property rights is not the way forward.
My 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. Framing threats to bodily integrity as if these are acts of trespass on private property is not, however, helpful. As J. W. 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.” The language we adopt has consequences, and, as Lisa Ikemoto puts it, replacing “bodily integrity, decisional autonomy and equality” with “free market individualism and ownership” affects the kind of society we create.

In what follows, I pursue my two questions—what’s wrong with claiming ownership in the body? what’s wrong with making bodies available for trade?—through case studies designed to highlight the risks of body property even where there are no obvious commercial implications, and the risks of body property when explicitly associated with markets in bodily services or parts. In chapter one, I expand on the difficulties in claiming the body as special and address some of the arguments for and against claiming it as property, before laying out the general grounds of my critique. In chapter two, I focus on rape, where the application of a property discourse is almost entirely metaphorical, with no direct implication as regards commodification.
I deal in this chapter almost exclusively with heterosexual rape, and with the rape of women's bodies, not those of girls or boys, for it is as regards the rape of adult women that the pull of property models has been most evident. In chapter three, I address markets in bodily services, focusing on commercial surrogacy rather than prostitution. Although prostitution would be the more obvious example, I want to tease out what it is about marketisation, as distinct from the activity, that can be regarded as problematic. Surrogacy is the more useful example here, because of the widespread distinction made between gift or altruistic surrogacy (usually deemed good) and commercial surrogacy (often deemed bad). In chapter four, I move on to markets in body tissues and parts, focusing on the most contentious trade—in live kidneys—and arguing that this relies on and undermines our status as equals. I also return in this chapter to those claims about property as protection, restating and developing my reservations about those who favour more body property as a means to resist excessive marketisation. In chapter five I turn to broad policy implications and argue that the individualism inherent in property claims makes it particularly difficult to engage with macrolevel concerns. Framing bodily rights as property rights constrains social policy in an overly individualist direction. Throughout the book, the fact that we all have bodies appears as a recurrent theme: it is in this, if anything, that the “specialness” of the body lies.

Markets change things, and so, I argue, does adopting a property discourse. We live in an era when developments in medical and reproductive technology present us with many troubling dilemmas about the extent to which the bodies of some can be employed to sort out problems with the bodies of others. Some of these may be temporary. It may be, for example, that further developments in medical science will make the search for
transplant organs unnecessary, and that we will be able to make replacement organs as we currently make prosthetic limbs. But whatever the possible marvels of future science, we can be sure of one thing: that the number and range of these dilemmas will continue to grow. As we move forward on this difficult terrain, I believe we should stop and think, first, about whether we really wish to regard our bodies as property, and second, whether sending bodies to market is compatible with human equality.