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2022 Kristýna Lepinová

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# Moral Justification of Organ Sale

Bachelor Thesis

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## Zásady pro vypracování

Despite organ donation systems running in numerous states around the globe, the shortage of transplant organs is a worldwide public health problem. With the average waiting time for an organ transplant ranging between 3 to 5 years and number of patients on the waiting list dying every day, a patient’s decision to resort to obtaining the organ illegally thus cannot be surprising. This raises a question, why –when there clearly is both demand and offer –not make organ sale legal?
From the moral point of view, there are four main objections to permitting organ sale: 1. exploitation, commodification, and instrumentalisation of the seller and her body; 2. harm and risk that the seller undergoes; 3. concerns about bodily autonomy and consent; and lastly, 4. concerns about the practice of free donation that would supposedly be undermined by the permission of organ sale.
In this thesis, I will discuss given arguments with the help of *The Body in Bioethics* by Alastair V. Campbell and works of Stephen Wilkinson and Eve Garrard.

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ANNOTATION

Despite organ donation systems running in numerous states around the globe, the shortage of transplant organs is a worldwide public health problem. This raises a question, why – when there clearly is both demand and offer – not make organ sale legal?

From the moral point of view, there are four main objections to permitting organ sale: 1. exploitation, commodification, and instrumentalisation of the seller and her body; 2. harm and risk that the seller undergoes; 3. concerns about autonomy and consent; and lastly, 4. concerns about the practice of free donation that would supposedly be undermined by the permission of organ sale.

KEYWORDS

Organ sale, bioethics, medical ethics, exploitation, commodification, instrumentalisation, harm, autonomy, consent, organ donation, altruism

NÁZEV

Morální ospravedlnitelnost obchodování s lidskými orgány

ANOTACE

Nedostatek orgánů k transplantaci je celosvětovým zdravotnickým problémem, a to i přes to, že téměř ve všech státech světa funguje systém darování orgánů. To však vyvolává otázku: Proč tedy, když nepochybně existuje poptávka i nabídka, obchod s orgány nezlegalizovat?

Existují čtyři hlavní morální námitky proti přípustnosti obchodu s orgány: 1. vykořisťování, komodifikace a instrumentalizace prodávajícího a jeho těla; 2. újma a risk, které prodávající podstupuje; 3. problém autonomie a souhlasu a 4. obavy o narušení praxe dárcovství orgánů, ke kterému by legalizací prodeje pravděpodobně došlo.

KLÍČOVÁ SLOVA

Prodej orgánů, bioetika, lékařská etika, vykořisťování, komodifikace, instrumentalizace, újma, autonomie, souhlas, darování orgánů, altruismus

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## Introduction

Organ transplantation is a medical praxis during which a patient with damaged, non-functional or diseased organ receives a functioning organ extracted from another human. The first ever successful organ transplantation was carried out in 1954 by Dr Joseph Murray who was later awarded Nobel Prize for his work. Nowadays, organ transplantation is a common medical praxis which saves over 36.000 patients yearly in the US alone.[1]

But behind those 36.000 saved patients stand over 10.000 posthumous donors and nearly 7.000 living ones.[2] Current donation systems allow obtaining organs for transplantation from both posthumous donors as well as the living ones, although the variety of organs offered by the living donors is limited. Without damaging the body of the living donor beyond functioning, it is possible to donate one kidney, lobe of a lung, lobe of liver, section of the intestine, and part of pancreas.

The procedure of organ donation falls under a set of rules, not only from the medical view point but also from the legal perspective. Although the legal requirements included in donating organs posthumously vary from state to state, there are two main organ donation systems whose slight variations are used all around the globe. The first one is the system of "presumed consent" in which each person automatically becomes an organ donor unless stated otherwise during her life time (in case of underage children, the consent of legal representative is required in order for the child to be included in the organ donation system). Such donation model is running in numerous states, mainly across Europe, for example in Spain, France, Greece, Norway, Sweden, and the Czech Republic. The "presumed consent" system is also in practise in India, however a bit altered, as the final authority over the posthumous donation lies with the next of kin.[3] In the late nineties, Brazil tried to implement this donation system but not to a great avail and in 2008 decided to come back to an "opt-in" donation model.

[1] "National Donate Life Month – April 2019 Donation and Transplantation Statistics," Donate Life America, January 16, 2019, https://www.donatelife.net/wp-content/uploads/2016/06/2019-NDLM-Donation-and-Transplantation-Statistics-FINAL-Jan2019.pdf.
[2] Ibid.
[3] Simar Singh, "Organ Donation Programmes Across The World," *Sites*, August 22, 2017, https://sites.ndtv.com/moretogive/organ-donation-what-other-countries-are-doing-1297/.

"Opt-in" is the second possible system of posthumous organ donation, which requires explicit consent (signing of a donor card) from potential donor during her life time or from her family after her death. This system is running in Brazil and USA.[4] As is evident, while the "opt-in" system offers more freedom in the matter of personal preferences and views on the treatment of dead body, it on the other hand does not use the full donor potential of the dead of the given country and it is thus no surprise that the countries which operate on the "opt-in" donation model have lower numbers of posthumous donors that the ones operating on "presumed consent" system.

Patients in need of organ transplantation are placed on a waiting list (in the US, new patient is added on the list every 10 minutes).[5] The person receiving new organ and the donor need to be a correct match, starting from the matching blood type up to the size of the organ (usually the best match is to be found among the relatives of the patient). From the already limited number of donors, picking the matching ones is not easy and thus over 8.000 patients on the waiting list in the US die every year because of the lack of suitable organ for them.[6] With such sad statistics at hand it is no surprise, that some patients take the desperate situation into their own hands and obtain the needed organ via a payment. Buying a human organ is, however, illegal in the vast majority of the states around the globe.[7] Here the question logically arises – what, on ethical ground of the discussion, makes a difference between organ donation and organ sale that allows one and disapproves of the other? Both organ donation and organ sale lies in the ill person receiving functional organ from another human being. The difference between the two is in the payment for the organ which takes place when the organ is sold but does not take place when donating the organ, the donor gives up her organ for free. The outcome of both donation and sale are however the same, the saving of lives.

The main ethical theories that I will take into account in the discussion of organ sale are deontological ethics, consequentialism, and libertarianism.

The theory that typically objects against the sale of human organs is deontology. The notion of allowing a person to sell parts of her body and most importantly the notion that putting a price tag on a human organ is even possible is against the Kantian idea of respect towards

[4] Singh, "Organ Donation Programmes Across The World."
[5] Donate Life America, "National Donate Life Month."
[6] Ibid.
[7] The only country in the world which legalized organ sale is Iran. The organ sale is, however, only restricted to kidneys.

human beings and the notion of not treating other people as means to an end. Deontological stance will be represented by selected chapters of the book *The Body in Bioethics* by Alastair V. Campbell.

On the other hand, consequentialists and libertarians are typically in favour of organ sale. The consequentialists see organ sale as an act that enhances the overall good because the permission of organ sale would increase the number of organs for transplantation and financially benefit the sellers. The consequences of organ sale increase the good – save the life of the patients and financially help the sellers. The consequentialist standpoint will be represented by the article "Bodily integrity and the sale of human organs" by Stephen Wilkinson and Eve Garrard.

What is crucial in the libertarian argument is the libertarian account of markets and self-ownership. Libertarians believe that an individual should be free in every aspect of their life, even in the economic sphere which together with the notion of self-ownership – notion that each individual fully owns her body the same way one owns for example a car.[8] Such set of arguments seemingly does not leave any room for the discussion about inadmissibility of organ sale. The libertarian viewpoint will be represented by the book *Stakes and Kidneys* by James Stacey Taylor and the article "The case for allowing kidney sales" by Janet Radcliffe-Richards and collective.

With the differing opinions from ethical theories, the organ sale discussion seems like an unsolvable ethical question. In this thesis, I will examine the question, whether the organ sale is ethically permissible or whether we should disapprove of it?

There are strong arguments in favour of organ sale. Praxis of organ sale would bring benefits to both parties participating so why not encourage people to give up their organs in exchange for a payment? Firstly, organ sale would bridge the gap currently existing in waiting lists as wider variety of organs would be made available. Secondly, the organ vendors would get financial reward for doing something that is currently only possible to be done for free (donating). The vendors would also have to undergo a medical examination to determine the condition of the organ and her overall condition. This medical check-up could benefit the vendor as it could reveal potential health issues that she was not previously aware of and therefore prevent further health complications. Lastly, as the factor of getting paid for an

[8] Bas van der Vossen, "Libertarianism," *The Stanford Encyclopedia of Philosophy*, January 28, 2019, https://plato.stanford.edu/entries/libertarianism/.

organ would presumably attract mainly people in tight financial situation the payment which the vendor receives could raise her standard of living.

The patient/ buyer would also gain advantages from the paid scheme as in the current illegal organ market, the survival of the patient/buyer is not guaranteed simply by the obtaining of the organ. After securing the organ, several issues could arise. Firstly, with no proper medical check-up of the vendor prior to the operation, it is not guaranteed that the patient/buyer will receive a healthy organ. When it comes to it, not only is there a possibility of receiving non-functioning organ but in case of no check-up taking place prior to the operation at all, it is possible for the patient/buyer to receive an organ of different blood type which her body will reject. Getting an unsuitable organ can lead to serious complications or even death.[9] Secondly, the transplantations with illegally bought organs are done secretly and thus nothing from the quality of the medical facility to the expertise of the doctors performing the transplantation is commonplace. The pre-operation or post-operation check-ups are also not guaranteed.

However, as stated above organ sale is very closely tied to number of ethical questions. Is it possible to put a price tag on body parts? Is it ethical to pay people to give up their organs? The list could go on. This thesis will focus on the question of ethical justification of organ sale, its possible permission or its prohibition. The thesis will follow the structure of the most commonly used arguments in the organ sale discussion, those being: 1. exploitation, commodification, and instrumentalisation of the seller and her body; 2. harm and risk that the seller undergoes; 3. concerns about autonomy and consent; and lastly, 4. concerns about the practice of free donation that would supposedly be undermined by the permission of organ sale.

To provide wider outlook on the matter of organ sale the book *What Money Can't Buy* by Michael J. Sandel and *Organs for Sale* by Susanne Lundin will be used throughout this thesis.

[9] Susanne Lundin, *Organs for Sale: An Ethnographic Examination of the International Organ Trade,* trans. Anne Cleave (Hampshire: Palgrave Macmillan, 2015), 55-56.

## 1. Exploitation, commodification, and instrumentalisation

One of the four main arguments tied to the organ sale discussion is the argument about possible exploitation of the organ seller (vendor) and her body. Exploitation is defined as an act of taking unfair advantage of someone whilst using their vulnerability for one's own benefit.[10] In the case of organ sale, exploitation is to be understood as taking an unfair advantage of the organ vendor by the person who buys the organ (usually not the organ transplant recipient herself, the organ sale scheme generally involves middle men, organ brokers, who arrange the sale) and in order to do that, the organ buyer takes advantage of the vendor's vulnerability – in case of organ vendors, it is usually either their poverty, their lack of education or both as will be discussed in more detail in the following subchapter.

I will start with exploring the question of exploitation, in the first part of this chapter. In the second part of this chapter, the key concepts closely connected to exploitation – commodification, instrumentalisation, and objectification – will be presented and commented on.

### 1.1 Exploitation

As stated above, exploitation is an act in which one agent takes unfair advantage of the other participating party due to the vulnerability of this party. When talking about organ sale, the vulnerability of the vendors is most often considered to be their poverty which is being taken advantage of by the organ buyers. Persons who partake in organ sale for the sake of earning money cannot be thought of in any other sense than of being in dire financial situation and their vulnerability thus being of economical character, for a person who could make money any other way, would opt to do so. It can thus be assumed that persons who choose to sell their organ live in a situation which cannot be solved any other way. They are thus vulnerable as they do not see any other option for resolving their situation than the sale of their own organ.

Poverty, however, is not the only type of vulnerability to which the vendors are exposed, second type of vulnerability is lack of education and information on the matter of organ sale.[11]

[10] Matt Zwolinski and Alan Wertheimer, "Exploitation," *The Stanford Encyclopedia of Philosophy*, August 16, 2016, https://plato.stanford.edu/entries/exploitation/.

[11] To illustrate the level of education and information on the matter of organ sale of the vendors, Lundin shared the conversation she led with a poor nineteen year old Arab boy Mahmoud who had sold his kidney: "To my

As will be further discussed in Chapter 3, lack of education and information invalidates consent. The lack of education and knowledge about organ sale also constitutes the vendors' lack of knowledge of potential risks and harms that are involved in organ sale, this matter will be further discussed in Chapter 2. Lack of education and information usually goes hand in hand with poverty as poor people usually do not receive sufficient education. A person vulnerable in one way or another, or perhaps both at the same time, can be considered more inclined to consent to organ sale.

Thus, no matter which definition of vulnerability we choose to think crucial in organ sale, the ones who are put in the vulnerable position always tend to be the poor. Indeed, in the current illegal organ market the vendors are the poor and the buyers the rich. This is not surprising, as there are possibly very few scenarios in which a rich person would be willing to sell her organ (i.e. be in a need of some extra money) and on the other hand, number of poor people view the sale of their organs as the only (or perhaps the easiest) way in which they could earn money to help them out of their dire financial situation. Does the act of buying an organ from a considerably worse off person create an exploitative relationship between the vendor and the buyer?

Economical differences are the essential substance of organ sale – a poor person is willing to give up her organ and rich person is willing to buy it. The organ sale scheme which is dependent on the economical differences between people exists on two levels – within one country and internationally.

### 1.1.1 International aspect

The question of exploitation is bound to come up when talking about two economically unbalanced groups engaging in financial relationships whilst the economically stronger group takes advantage of the economically weaker group. As Susanne Lundin points out, the problem with current illegal organ sale is the so-called medical tourism. Medical tourism is the practice of travelling to another country to buy a treatment that is forbidden, difficult to access, or very expensive in the home country of the buyer.[12] The medical procedures that are sought after range from cosmetic surgery, fertility treatment, to serious medical problems –

follow-up question of whether he could have imagined selling parts of his liver, Mahmoud looks confused: 'A liver? What's a liver? How should I know what's in my body?'" – Lundin, *Organs for Sale*, 28.

[12] Ibid., 4.

which include organ transplantation.[13] The countries which become destinations of transplant tourism (medical tourism with the goal of obtaining an organ transplant) meet the requirements – mild laws restricting local medical field, accessibility of said treatment, cheap price of the treatment or, in the best case scenario, all three. Such favourable conditions for transplant tourism can be found in the Philippines. Local laws allow Filipinos to "donate" their organs in exchange for reasonable payment. It is thus no wonder that in no time the Philippines attracted buyers from wealthy countries, above all Israel and Saudi Arabia, who could afford to buy the organs.[14] Should a wealthy citizen of Israel buying a kidney from a poor Filipino bother us in any way? Does the internationality of the sale make any difference in the scope of exploitation it entails?

James Stacey Taylor does not view the medical tourism to be exploitative neither towards the poor countries nor their citizens. On the contrary, he views organ sale as an opportunity for the countries to improve their economic status. He says: "[i]n consequence, just as the kidneys that are sold in such an international trade would flow *"from East to West... from black and brown bodies to white ones... from poor, low status men to more affluent men,"*[15] the wealth that is used to purchase them would flow in the opposite direction: from West to East, from white bodies to black and brown ones, from more affluent persons to their poorer brethren. A regulated current market in human transplant kidneys is thus more likely to aid the economic development of the world's poorer countries than impede it."[16] While Taylor is definitely not incorrect in his conclusion that the money from organ buyers would flow to the vendors, the question is whether such financial gain could be regarded as raising the living standard and aiding economic development of the vendor's home country.[17] In *The Body in Bioethics*, Alistair V. Campbell presents data from a report for WHO, which shows that cases in which the vendor uses her money earned via organ sale to invest into starting her own business or buying land are rare occurrences. Organ vendors usually use the money for paying off their debts or to afford costly medical treatment for herself or a family member.[18]

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[13] Lundin, *Organs for Sale*, 97.
[14] Ibid., 43.
[15] Taylor, *Stakes and Kidneys*, 108, quoting Scheper-Hughes (2003), p.1645.
[16] Taylor, *Stakes and Kidneys*, 108.
[17] Medical tourism can, of course, attract investors and thus develop the medical science in given country. The motivation behind this would, however, remain debatable – the development would bring good both to the investors and the citizens of the country. Although this development would benefit both parties participating, the hint of exploitation would still be visible as the investors took advantage of the laws and people of the country as means to their own ends.
[18] Campbell, *The Body in Bioethics*, 37.

### 1.1.2 Local (national) aspect

To avoid the international organ sale, solutions such as creating a monopsony (introduced by Erin and Harris) were proposed. Monopsony allows the sale and purchase of organs only from and to the citizens of the given region, e.g. on the grounds of the Czech Republic, only the citizens of the Czech Republic could sell their organs and also only the citizens of the Czech Republic could buy these organs.[19] Taylor sees a flaw in such a system because "[i]t is, for example, unlikely that a poor person in Britain or the United States would be interested in selling a kidney in a regulated market if the going rate was approximately $2000 (£ 1250), plus post-operative expenses. By contrast, a poor person in Tamil Nadu, India is likely to be motivated to sell for this price, since it represents almost four years' family income."[20] The solution to Taylor's argument would be rise in payment provided to the organ vendors (high enough to motivate them to sell their kidney) which would consequently result in higher final price of the organ transplantation. Campbell, however, claims that the shift in affordability of the procedure would go against the primary reason for organ sale which is to provide more organs than are available in the current day. As the prices of transplant organs would rise, only the very rich could afford to buy them.[21] This shows that organ sale must be understood on an international level as local (nation) level would not prove to be sufficient to provide enough people willing to participate in organ sale.

## 1.2 Objectification, instrumentalisation, and commodification

Exploitation could be thought of as an umbrella term which includes other terms interrelated with the notion of exploitation. The terms which are relevant to the organ sale discussion are objectification, instrumentalisation, and commodification. Objectification is the act of wrongfully treating someone (or something) that is not a mere object as if it were a mere object.[22] Instrumentalisation is act of treating something (or someone) that is not a mere means as if it were a mere means. [23] Commodification is defined as treating something (or someone) that is not a mere commodity as if it were a mere commodity. Sandel defines commodification as an act in which "we decide that certain goods may be bought and sold,

[19] Campbell, *The Body in Bioethics*, 38.
[20] Taylor, *Stakes and Kidneys*, 108.
[21] Campbell, *The Body in Bioethics*, 38.
[22] Stephen Wilkinson, "The Sale of Human Organs," *The Stanford Encyclopedia of Philosophy*, October 22, 2015, https://plato.stanford.edu/entries/organs-sale/.
[23] Ibid.

we decide, at least implicitly, that it is appropriate to treat them as commodities, as instruments of profit and use."[24] This definition leaves no space for doubts whether organ sale is or is not commodifying the vendor and her body[25]– if an organ can be bought and sold, it has thus became a commodity. Organ sale commodifies the vendor and her organs, the question we should ask ourselves is whether we think it moral? In other words, whether we consider putting a price tag on a human body ethical?

Firstly, not all authors agree with the stance that commodification and exploitation are linked. While Stephen Wilkinson and Eve Garrard acknowledge that organ sale commodifies seller and her body, they argue that organ sale is not exploitative *just because* it involves treating human body as a commodity. They propose that we think of a scenario in which the organ seller were wealthy, educated, rational and well-informed and got paid a decent sum of money for her organ – would we still think organ sale taking place under such conditions exploitative?[26]

The fact that Wilkinson and Garrard presented their vendor as being both wealthy and educated (plus even rational and well-informed) is a clear response to the initial definition of exploitation as an act of taking unfair advantage of someone whilst using their vulnerability for one's own benefit. As was defined previously in the introduction of this chapter, the vulnerability of the organ vendors is either their poverty or their lack of education and information. Wilkinson and Garrard's vendor is not vulnerable in any of the ways presented – she's neither poor nor uneducated – which would make her a perfect candidate to take part in the organ sale. One question, however, remains – what would be this vendor's motivation to partake in organ sale as she is stated to be wealthy? This flawless vendor argument thus does not provide the most important component which is the motivation. The motivation behind organ sale from the vendors' viewpoint is the money she will earn. However, Wilkinson and Garrard's vendor is introduced as being wealthy, which would undermine the financial motivation – there is no need for a wealthy person to make money via organ sale. If Wilkinson and Garrard's vendor wishes to provide her organ to those in need – which is the only motivation left after we have eliminated financial motivation – there is thus no reason for the vendor to not donate her organ instead of selling it. The flawless vendor argument by

[24] Sandel, *What Money Can't Buy*, 9.
[25] Not necessarily her body as a whole, in the case of organ sale, it might be argued that only the vendor's organ is being commodified.
[26] Wilkinson and Garrard, "Bodily integrity and the sale of human organs," 335.

Wilkinson and Garrard thus proves to be only a little mind experiment with no real weight in the organ sale discussion.

The flawless vendor, however, seems to bring the organ sale discussion to the point where the consequences of organ sale become relevant. With the flawless vendor the problem was lack of motivation, for ordinary vendor from the Philippines the motivation is clear and that is the payment received. The vendors most commonly need the money to pay off debts or to afford a medical treatment. Organ sale seems like quick and easy money to help them out of their unfavourable situation. What the usually uneducated and uninformed vendors fail to see are the consequences of the sale. Campbell states that the vendors "are very rarely given follow-up care, for financial reasons or due to discrimination, and are forced to start heavy manual work too soon after surgery. They often undergo chronic pain and fever, and complain of a significant deterioration of their health after the transplantation."[27] This only further proves the need of education and information as only an educated and well-informed vendor could take into consideration the consequences of organ sale. The consequential harm and risk pose a real problem in current illegal organ sale. The question which arises from this is whether the possibility of consequential harm makes organ sale unethical? This question shall be further discussed in the next chapter.

[27] Campbell, *The Body in Bioethics*, 37.

## 2. Harm and risk

Argument that organ sale encourages the vendors to harm themselves is another argument that has to be explored in order to find out whether organ is or is not ethically permissible. Harm in this context can be understood as having either physical or economical/financial character – the consequences of the organ sale (i.e. the consequences of the surgery itself) can bring harm to the vendor and her body (i.e. the vendor is not able to endure manual labour, the vendor is not able to work as many hours as she did before the surgery), the economical consequences are usually tied to the physical harm – vendor is not able to work because of the surgery so she gets into tight financial spot.[28] What I would like to point out as important is the fact that when talking about both organ sale and organ donation, the surgery carried out in order to obtain the organ *always* brings harm, for there is no way to get organ for human body without a surgery.

The argument of harm is usually tied to the argument of potential risk that the vendor undergoes. Risk is tied to the willingness of the vendor to deal with potential consequences of the harm caused by the surgery (either physical or economical or both, as was stated in the previous paragraph). Risk in contrast to harm is in the context of organ sale only possibility, not a necessity.

Does organ sale really encourage harm and risk? And if it does, is this anti-organ sale argument enough to deem organ sale as morally wrong?

In the first part of this chapter, I will focus on an analogy drawn between organ sale and risky labour. In the second part, I will examine the argument that organ vendors and organ donors subject themselves to the same amount of harm and risk. My main source for the discussion of this argument will be the article "The case for allowing kidney sales" by Janet Radcliffe-Richards and collective.

### 2.1 Risky labour

In order to discuss the matter of harm and risk in philosophical discourse, an argument by analogy has been drawn in which organ sale is being likened to so-called "risky labour". Risky labour is any kind of labour whose dangers can potentially lead to an injury or even

[28] Lundin, *Organs for Sale*, 47. –„The medical examinations showed that all of them had had one of their kidneys surgically removed and that almost all of them had health problems as a consequence of not having received medical follow-up care. Several men were also having serious difficulties with the remaining kidney, and all certified that they were in significantly worse shape, both socially and economically, than before the organ sale."

passing away of the labourer. Wilkinson and Garrard propose the examples of risky labour being fire-fighters, astronauts, miners and divers.[29] The premise of the risky labour argument by analogy is that since we allow persons to engage in a dangerous occupation (risky labour) and even pay them for doing so, then an organ sale – in sense of also being dangerous and paid for – should not be morally condemned.

One of the main differences between risky labour and organ sale that Taylor points out is the difference in their objective. Risky labour workers[30] choose to perform given activities because they want to engage in them for the sake of getting paid as well as for the sake of their own sense of fulfilment. On the other hand, organ sellers do not choose to sell a kidney because they want to engage in the activity of giving away their kidney. Organ vendors engage in organ sale not for the sense of fulfilment they gain from the activity, they choose to sell a kidney because of the financial situation in which they find themselves, their sole objective is thus the raising of money.[31] Taylor claims that "while the typical firefighter is likely to believe that their occupation is intrinsically worthwhile (and so chose to become one at least in part for this reason), the typical kidney vendor is likely only to accord instrumental value to the sale of a kidney."[32]

The difference between risky labour and organ sale also lays in the attitude towards the "labour" done – firefighters (and other risky labour workers) view their occupation and the risks tied to it as worthwhile of undergoing the possibility of harm and risk. On the other hand, organ vendors view the sale as being of instrumental value only. Taylor says that if we were to prohibit persons from pursuing dangerous jobs and activities – such as becoming firefighters or organ vendors – "we would do so after assessing the value of their occupation to them as not being worth the associated dangers."[33] As has already been stated, firefighters hold (or generally tend to hold) their occupation to be valuable in itself which would challenge the idea that it is not worth the risks they take, they became firefighters not only because they need to earn money, it also resonates with their set of beliefs. On the other hand, the "occupation" of being a kidney vendor has a clear value, that being the price paid for the organ. The prohibition of persons' engaging in dangerous occupations and activities would

[29] Wilkinson and Garrard, "Bodily integrity and the sale of human organs," 334.
[30] Taylor expands the scope of risky labour argument to the dangerous activities in which people engage in their free time which will be discussed later.
[31] Taylor, *Stakes and Kidneys*, 122.
[32] Ibid.
[33] Ibid., 123.

thus, according to Taylor, involve an imposition of alien values upon kidney vendors.[34] Taylor concludes that "[a]rguments that would show that organ sale is morally dubious seem also to show either that payment for risky labour is morally dubious or that organ donation is morally dubious."[35]

Wilkinson and Garrard go as far as claiming that the different attitude towards risky labour and organ sale cannot be justified in terms of consequences because both risky labour and organ sale produce good consequences and add that "the consequences of a organ sale (typically, saving a life) may be just as good or better."[36]

It could, however, be argued that the differences between organ sale and risky labour are more important than their similarities. Firefighters and other risky labour workers are accordingly educated in their field of specialisation, they are skilled and the harm and risk they undergo in their occupation are a possibility not a necessity. Organ vendors, on the other hand, are mere passive participants in the act of organ sale. It is not possible for anyone to be "skilled" for a nephrectomy. In organ sale, the harm is inevitable; there is no other way to get a kidney from the vendor's body besides via surgery.

My other point is the one-time possibility of organ sale, whereas risky labour (or any labour for that matter) can be done repeatedly for the whole duration of a working adult's life. The comparison of organ sale to risky labour used as an argument in favour of organ sale clearly has its limits and flaws. For persons to be allowed to sell their body or organs a libertarian theory of self ownership would have to be thought the most important ethical notion, as a person can legally only sell something that belongs to them – the self-ownership notion declares that people own their bodies in the same sense as they own a car or their other belongings and can treat them as such, for example give them up for sale. The question, however, remains whether we as society think a person's body belongs to them or is an inseparable part of a human being as such and is thus unfit for sale of its parts.

Another argument in quite a similar vein to the risky labour parallel is the argument which draws a simile on organ sale and dangerous activities in which people engage in their free time and which are not illegal. Example of such activities is extreme sport – diving, racing, and mountaineering. This argument states that if people are allowed to risk their bodies for

[34] Taylor, *Stakes and Kidneys*, 123.
[35] Wilkinson and Garrard, "Bodily integrity and the sale of human organs," 336.
[36] Ibid., 334.

pleasure, there then should not be any obstacle to risking their bodies for financial reward, i.e. participating in organ sale.[37] Such a view has very strong libertarian undertones and is closely tied to both the question of commodification and consent which will be discussed in more detail in Chapter 3.

### 2.2 Same harm and risk for seller and donor

Other argument in favour of organ sale is the fact that nephrectomy in itself does not present any different danger, risk, or harm to a seller than it does to a donor. Radcliffe-Richards states that the surgery itself is the same for both seller and donor, the act of money exchange taking place in one of the scenarios does not affect the surgery itself in any way.[38] This cannot be argued with, the surgery itself does not become more dangerous once the seller signs documents about the sale and vice versa does not become safer the moment the donor decides to altruistically give away her organ. What can, however, be argued with is the ignorance of the fact that the risk and harm involved in current illegal organ sale is most usually not the surgery itself but lack of proper medical care after the surgery which results in complications to the vendor's life. Such problem does not concern organ donors as organ donation is a legal procedure carried out in safe environment by adequately educated medical professionals. Radcliffe-Richards agrees but also states that the risks involved in organ sale – not only health risks but also the chance of being underpaid or cheated – also apply to number of other activities in which the poor engage in hopes of earning money and which are not forbidden or illegal[39] – for example prostitution or poorly paid labour.

The problem, however, arises when we take a look at typical organ sale scheme. As was stated previously in this thesis, organ sale does not involve only the two parties participating – the buyer and the vendor – it also includes an organ broker who arranges the match. The organ brokers are the only part of the scheme which does not risk anything by engaging in it, quite the opposite; the brokers usually make great deal of money as the usually uneducated vendors have no real grasp of the price of organs they sell.[40]

The discussion about legal solution to the current problem with organ brokers making money out of the poor vendors, might seem to be strong enough to think about banning the sale as a whole. Here Wilkinson and Garrard's argument about banning new practices comes into play.

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[37] Campbell, *The Body in Bioethics*, 39.
[38] Radcliffe-Richards et al., "The case for allowing kidney sales," 1950-1951.
[39] Ibid.
[40] Lundin, *Organs for Sale*, 41.

Wilkinson and Garrard propose the idea that banning a new practice is easier than banning an established one as it would be more disruptive, unpopular and costly. They view this as one of the possible reasons for the ban of organ sale even though they do not consider organ sale being morally no worse than for example poorly paid labour. Wilkinson and Garrard propose that the fact that organ sale is banned whereas poorly paid labour is not, shows that not all exploitative practices can be banned and "in the real world we must settle for banning just those which we can ban, or can ban without excessive disruption and cost."[41] They suppose that the difference on legal grounds between organ sale and poorly paid labour or other exploitative practices that are legal does not show ethical superiority of poorly paid labour over organ sale. It merely shows that some ethically dubious practices are easier to ban than others.[42]

The discussion concerning harm and risk which the organ vendors undergo is closely tied to consent. In order to be able to identify the potential risks of organ sale, the vendor must be provided with adequate information. The sufficiency of adequate information is also one of the conditions of informed consent which will be discussed in the following chapter.

[41] Wilkinson and Garrard, "Bodily integrity and the sale of human organs," 335.
[42] Ibid.

## 3. Autonomy and consent

In search of answer to the question, whether organ sale is ethically correct or incorrect, among already discussed arguments, the argument that organ sale might undermine the autonomy of the organ vendors and invalidate their consent is discussed. Consent, in the case of organ sale more precisely *informed consent*, is defined as informed, voluntary, and decisionally-capacitated consent. To be considered fully informed, the consenting individual (here organ vendor) must receive relevant information about the procedure and understand it in its whole. Only then she can give her voluntary consent to the procedure.[43]

In order to be able to consent voluntarily, the vendor must be autonomous in her actions. An autonomous agent is an agent who is self-governing.[44] The potential loss of autonomy mentioned in the introduction of this chapter would thus mean the loss of the organ vendor's ability to govern herself and her own body. The loss of one's autonomy would thus make one's consent invalid as she did not govern herself at the time, i.e. was governed by someone else, was under someone else's influence.

In the first part of this chapter, informed consent will be further defined and explored. In the second part of the chapter, the question of autonomy in the context of organ sale will be discussed.

### 3.1 Consent

In order to establish an ethical organ market, a practice of gaining clear and valid consent from the vendors is crucial. I believe that obtaining consent from the vendors would not prove too difficult, the question, however, is how to efficiently ensure that every person who consents with the sale of her organs does so autonomously and was not forced, coerced or manipulated into the act? According to Campbell informed consent works under three conditions: competence, voluntariness and disclosure of adequately supplied and understood relevant information.[45] It becomes clear that a vendor must be provided with relevant information prior to the surgery in order for her to be fully able to consent in Campbell's view. Is there a way to ensure that all three conditions are met? Campbell supposes that at least the latter two conditions – voluntariness and adequate information – might not be met in

[43] Nir Eyal, "Informed Consent," *The Stanford Encyclopedia of Philosophy*, January 16, 2019, https://plato.stanford.edu/entries/informed-consent/.
[44] Sarah Buss and Andrea Westlund, "Personal Autonomy," *The Stanford Encyclopedia of Philosophy* , February15, 2018. https://plato.stanford.edu/entries/personal-autonomy/.
[45]Campbell, *The Body in Bioethics*, 41.

the process of organ sale. The organ vendors are usually the poor as I have already established in Chapter 1, lack of voluntariness and adequate information is thus connected to their vulnerabilities (also established in Chapter 1) – poverty and lack of education. This further shows that exploitation and consent are closely connected topics and should be treated as such.[46]

What might compromise the vendor's consent is not only lack of competence, voluntariness or understanding of relevant information as Campbell proposes but also the financial situation of the vendor. It could be argued that the poor vendors are coerced into organ sale because of their dire financial situation; they are so poor that there is no other choice left than to sell an organ. Taylor apposes that financial situation cannot be considered a good enough inflictor of coercion as it would have to *express intent* to perform control over the vendor. He claims that as only agents can express intent and exercise control over others, it can also only be agents that can coerce others into doing something. Taylor claims that since financial situation is not an intentional agent, it thus cannot coerce anyone into anything.[47]

The financial situation *itself* cannot coerce the vendor into organ sale, the organ buyer (or perhaps more precisely, organ broker), however, being an intentional agent, can. Taylor claims that the anti-market argument regarding possible coercion of the vendors into consenting cannot be accepted as it is "at once too weak and too strong."[48] The argument is, according to Taylor, too weak because while the permission to sell organs is likely to result in *some* of the vendors being coerced into the sale, it is also likely that majority of the vendors would sell their organs autonomously. Taylor thus does not view organ sale as whole to be undermining autonomy of the vendors, he claims that organ market can "be recognized as morally permissible, even if a minority of vendors might suffer from impaired autonomy as a result."[49] On the other hand, he claims that the argument from coercion is too strong because, it would show that *any* market in *any* commodity is morally impermissible. To defend this argument, Taylor claims that in the same way someone might be coerced into selling their kidney, someone could also be coerced into selling anything else that they own.[50]

Campbell disagrees with Taylor's view and claims that consent of organ vendors cannot be considered as valid consent because it tends to be seriously compromised. Campbell points

[46] Campbell, *The Body in Bioethics*, 42.
[47] Taylor, *Stakes and Kidneys*, 59.
[48] Ibid., 61.
[49] Ibid., 62.
[50] Ibid., 61-62.

out that even though the financial situation itself cannot coerce the vendor into selling her organ, the situation (e.g. being in debt) can be taken advantage of by organ brokers.[51] Campbell thus does view the vendors' consent to be in majority of the cases influenced by brokers taking advantage of their financial situation, the financial situation itself becomes a coercive power in the hands of the brokers.

In the question of possible coercion of the vendor into consenting to organ sale, Wilkinson and Garrard draw an analogy between organ sale and organ donation. They argue that if the possibility of financial pressure coercing organ seller into the sale is sufficient reason to ban organ sale, then the possibility of emotional pressure on the related organ donor should also be sufficient reason to ban organ donation. They conclude that since donation is not banned, the possibility of pressuring vendors cannot be a sufficient reason to ban organ sale. Wilkinson and Garrard, however, acknowledge that financial and emotional pressures are different and add that financial pressure is "more erosive of the possibility of genuine consent"[52]. They, however, argue that if the vendor's dire situation cannot be relieved any other way, "forbidding her to sell her kidney is more harmful than undermining her autonomous consent (by allowing her to sell it)."[53] Wilkinson and Garrard conclude that the sale itself is no worse than the fact that persons are allowed to live in such desperate circumstances in which they view the sale of their organs to be the only solution.[54]

Wilkinson and Garrard, however, only talk about organ sale and donation from relatives, what they do not consider is an altruistic donation from unrelated donors. These donors are under no pressure, neither financial nor emotional. So supposedly, in Wilkinson and Garrard's scenario, altruistic donation is the only one involving no coercion and can thus be viewed as the only way of obtaining an organ with valid consent.[55]

Radcliffe-Richards agrees with Wilkinson and Garrard's view on the desperate living situation of the possible vendors. She adds that the ban of organ sale would only reduce the range of possibilities from which the poor choose their options on how to get out of their dire financial situation.[56]

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[51] Campbell, *The Body in Bioethics*, 42-43.
[52] Wilkinson and Garrard, "Bodily integrity and the sale of human organs," 336.
[53] Ibid.
[54] Ibid.
[55] I am working with the living donor/seller scenarios only. The question of consent in posthumous donors/sellers was dealt with in the introduction of this thesis.
[56] Radcliffe-Richards et al., "The case for allowing kidney sales," 1950.

Radcliffe-Richards views the ban on organ sale as a paternalistic measure made in hopes to "protect" the poor who are not competent to consent (due to their financial situation or education level) by putting the decision (to sell an organ or to not sell it according to the legal status of the act) into hands of the others – in case of organ sale, into hands of those currently being in charge of legislative, as organ sale is not legal. Radcliffe-Richards thus shows that she does not think that financial situation or education level of the potential organ vendors deem them incompetent to consent. She supposes that the organ vendors must have considered their choices and viewed organ sale as the best fitting for their situation in which they already have to choose from a very limited range of options of raising money.[57] Radcliffe-Richards proposes that in order to ban organ sale, "it would also be necessary to show that organ selling must always be against the interests of potential vendors, and it is most unlikely that this would be done."[58] Radcliffe-Richards thus claims that organ sale is not against the interests of organ vendors. Her claim, however, could only be made if we would be able to ensure that the vendors provided valid consent with the procedure – i.e. the vendors were competent to consent, they consented voluntarily, and they were provided with adequate information prior to consenting with the procedure.

### 3.2 Autonomy

As was already stated in the introduction of this chapter, consent and autonomy are closely interrelated terms. Autonomous person is a person who governs their own self. Potential loss of autonomy can lead to invalid consent. How can be autonomy lost? Autonomy might be lost either in physical sense (e.g. someone is kidnapped), or psychological sense (e.g. someone is manipulated or coerced into an act they would not voluntarily partake in).

Taylor asserts that even if organ vendors are motivated by their desire to change their economic situation, they are still acting autonomously. Taylor claims that organ vendors weight up advantages and disadvantages of the sale and only then decide if they wish to engage in the procedure or not. He thus concludes that vendors' autonomy is not impaired as vendors themselves decide whether to partake in organ sale or not. Taylor thus disagrees with the argument that vendors' autonomy is impaired by the price offered for the organ.[59] This notion, however, does not correspond to neither of the already established definitions of autonomy or consent. The fact that vendors weight advantages and disadvantages of the

[57] Radcliffe-Richards et al., "The case for allowing kidney sales," 1950.
[58] Ibid.
[59] Taylor, *Stakes and Kidneys*, 68.

procedure prior to it, does not eliminate their vulnerabilities, neither poverty nor lack of knowledge is resolved by this claim. Taylor, however, disagrees and claims that allowing people to sell their organs if they so choose will expand the ways in which they can exercise autonomy, not comprise it.[60] This statement can, however, be argued with on the basic grounds of organ sale generally not being autonomous act, organ vendors usually do not autonomously consent with the procedure because they do not have the needed information in order to provide informed consent.

Radcliffe-Richards agrees with Taylor that banning organ sale and thus removing the best option for the poor to get out of their dire financial situation, it would only make the range of options to get out of poverty smaller. Radcliffe-Richards views the ban of organ sale as autonomy restricting to the possible vendors. The only way, according to her, is to lessen poverty until organ sale is no longer viewed as the best and only option. She claims that "if that could be achieved, prohibition would be irrelevant because nobody would want to sell."[61] This shows that Radcliffe-Richards views organ sale solely as an instrument for the poor to make money. Organ sale, however, is generally viewed as a practice that helps save lives of patients in need of organ transplantation. Radcliffe-Richards' point of view is thus only focused on the vendors and ignores the buyers, the patients, who in the typical understanding of organ sale scheme are those in need of help.

The help to the organ transplantation patients is currently provided via organ donation, either from related, living or posthumous donors. The numbers of donors however are no match to the numbers of patients in need of organ transplantation. Organ sale might appear like a great solution to this shortcut. The question, however, is what would happen to altruistic donations if organ sale were introduced? Would organ sale completely remove the praxis of altruistic donation or would organ sale and altruistic donation coexist?

[60] Taylor, *Stakes and Kidneys*, 51.
[61] Radcliffe-Richards et al., "The case for allowing kidney sales," 1950.

## 4. The practice of altruistic donation

In search of answer to the question, whether organ sale is morally wrong or not, a comparison between organ sale and altruistic donation is naturally deemed to come up. It is argued that the possibility of organ sale would undermine or even fully remove the practice of altruistic donation. Altruistic donation depends on the donating party being willing to give up her organ for no compensation or benefit whatsoever taking place after the donation. The donor donates from her free will for the sake of the other – in the case of organ donation her motive is to help a transplantation recipient and thus save her life. Would the act of getting paid for one's organ undermine the practice of altruistic donation? And even if it did, would that pose a problem?

In the first part of this chapter, I will present the differences between organ sale and organ donation. Then, the term of reciprocal altruism will be discussed. Lastly, a possible drop in numbers of donated organs influenced by the introduction of organ sale will be explored.

### 4.1 Differences between organ donation and organ sale

The main difference between organ donation and organ sale is the payment which the organ vendor receives for her organ. The differences, however, do not end here as I have already presented multiple times throughout previous chapters of this thesis.

Organ donation is a practice in which one individual gives away her healthy organ to another individual who is in need of transplantation of given organ. This procedure can take place whist both of the parties are alive, however, organ donation can also take place posthumously. Posthumous organ donation, however, is not a focus of this thesis so when a comparison is drawn upon organ donation, it stands for organ donation from a living donor. The procedure of organ donation was presented in the introduction of this thesis.

The reason why the discussion about organ sale was raised in the first place is the fact that the current donation systems are not sufficient to cover the rising numbers of patients in need of organ transplantation. Under the current circumstances, majority of organ donations take place between related parties, as the donor and recipient tissue needs to be matching in order for the transplantation to have potential to be successful, tissue match is most often to be found between related persons. There, however, are cases in which a tissue match between related persons is not found, in those cases the patient in need of transplantation is placed on a waiting list for the needed organ. Organs for patients on waiting lists are obtained via

donation either from living donors or from posthumous donors. As was already mentioned in the introduction of this thesis, thousands of patients placed on waiting lists die every year as the correct match for them was not found in time.[62] Those statistics showed a gap in the market which illegal organ vendors took as a chance to make money via selling organs from living donors and helping both participating parties – patient gets the needed organ and the organ vendor gets money which she needed. Although, the organ market is not safe for neither of the participating parties as was stated multiple times in the previous chapters of this thesis, there still is hope for its legalized alternative, which in its true form could work as a paid scheme which helps to save lives.

As was already stated, organ sale is in its core similar practice to organ donation with the exception of money exchange taking place. The financial aspect of organ sale, however, raises the question whether altruistic organ donation would survive the introduction of organ sale? Wilkinson and Garrard claim that there is no reason to be worried that altruistic donation will be fully replaced by organ sale. They believe that organ sale and altruistic donations can co-exist in the same way professional social work and charitable social work co-exist.[63] This fact, however, has a lot to do with the motivation of Wilkinson and Garrard's social workers. The professional social worker has received appropriate education for the work they are doing, they are adequately paid for the work they input into the job and their level of education. On the other hand, charitable social worker most often takes care of their ill relative who would otherwise need to hire a professional social worker.[64] Their motivation is thus of inner moral character as they do the job out of their own volition and it can be supposed that doing so matches their inner set of beliefs. Their motivation is thus not of material character. The professional worker, however, usually has double motivation – both the financial reward and the fulfilment of their beliefs. To draw the parallel between social workers and organ vendors/donors, Wilkinson and Garrard want to point out that the act of money exchange taking place in organ sale – in a similar manner as money exchange taking place in professional social worker's circumstances – does not derive the altruistic element from the act. Wilkinson and Garrard thus suppose that organ vendor, just like the professional social worker, can and *does* have double motivation – one being the financial reward which she receives and the second being the fulfilment of her inner beliefs, those being the saving of

[62] Donate Life America, "National Donate Life Month."
[63] Wilkinson and Garrard, "Bodily integrity and the sale of human organs," 335.
[64] Other scenarios in which charitable social worker could be doing their job might be on a part-time basis or probably nuns. Wilkinson and Garrard, however, do not provide any examples of charitable social work in their article.

another person's life.[65] I would, however, like to argue with this view as organ sale is clearly tied to money, it does not take into much consideration the state in which the buyer finds herself. To illustrate my point, imagine a person who sells their house, they do so in order to make money, the other motivation which Wilkinson and Garrard suppose present in act of selling, that being the wellbeing of the buyer, in the case of house seller is not present, they do not sell their house because they want other people to have a place to live in. If their motivation was the wellbeing of others, providing housing for them, the seller would give the house to the buyer and not sell it. My parallel with a house might prove to be too far stretched from the matter of organ sale, for this I suppose to take into consideration a comparison between donated and sold plasma, or altruistic and paid for surrogate pregnancy.

Following similar line of reasoning, Wilkinson and Garrard discuss an argument that states that "allowing payment for organs would deprive people of an opportunity to participate in "giving" relationships with one another."[66] They argue that the mere permissibility of organ sale would not prevent people who want to donate from donating. It is presumable that majority of those people would rather sell their organs than give them away for free. Wilkinson and Garrard, however, see the possible fee as a way for the seller/donor to be altruistic if she gives up her fee.[67] This way she can be even more generous than before – she is not only giving up her organ but also her fee.[68] Taylor agrees with the viewpoint that organ sale in fact allows the organ vendors to be even more altruistic than donors can be. He shares the same opinion as Wilkinson and Garrard do and adds that with the possibility of organ sale the organ vendor/donor would have three options on how to handle the sale/donation. "[T]hey would now have an option (to sell) that they were previously denied, *as well as* the option altruistically to give away the money secured through this sale, *and* the option altruistically to give away, a kidney that has a certain determinate price."[69] Taylor thus claims that under current circumstances – of only donation being possible – the donor (possible potential vendor) is forced to be altruistic as altruistic donation is the only option on how to obtain an organ.[70]

[65] Wilkinson and Garrard, "Bodily integrity and the sale of human organs," 335.
[66] Ibid.
[67] The word "fee" is used in the text because of its use in the source material by Wilkinson and Garrard. I, however, would argue that the use of word "fee" could be misleading and would instead prefer the word "payment" or "financial reward" as it is more appropriate and accurate under given circumstances.
[68] Wilkinson and Garrard, "Bodily integrity and the sale of human organs," 335.
[69] Taylor, *Stakes and Kidneys*, 170.
[70] Ibid.

Although Taylor presents strong pro-organ sale views, he admits that "the system of procuring transplantation organs from live donors must be seen as a supplementary, rather than a primary, method of procurement."[71] The number of posthumously donated organs could never be matched by the number of organs obtained via organ sale. One of the main reasons for this is the fact that only a limited range of organs can be removed from human body without drastically changing the functioning of the body. The posthumous donor, however, could theoretically donate every single one of her organs. The human heart could be taken as an example of organ that cannot be obtained via organ sale but can only be taken from posthumous donors.

### 4.2 Reciprocal altruism

In order to boost the number of organ donations, a partially pro-organ sale scheme has been proposed in form of a financial reward or more accurately a compensation (e.g. for the days the donor/vendor was unable to work because of the surgery and post-surgery treatment). An organ donation reward system has been introduced in Israel. Israelis who agree to donate their organs after their death are guaranteed priority for medical care if they themselves happened to be in a need for a transplant. The Israel government calls the system "reciprocal altruism."[72] Can, however, altruism as a term be used this freely? Altruism is understood as an act carried out with the motive of bringing the good for the other and with no means or gains for oneself stemming from the act. Israeli system of "reciprocal altruism" goes against this very definition of altruism because the participants in "reciprocal altruism" system in fact do want to and can gain something for themselves out of being "altruistic," in this case a help in case of being in need of organ for transplantation.

A possible scenario in which altruism could be reciprocal is the system which works in the United States. Taylor points out the legal organ market of sorts which is already in place in the United States. The American donation system allows a way for legal *barter-based* market for human kidneys in which no money is exchanged. In the barter-based market, altruistic donors who want to donate to particular individuals (most usually relatives) but are unable to do so because of tissue incompatibility between the donor and patient seek out a pair of donor-patient with the same problem and who are compatible with the first pair – first donor is compatible with the second patient, the second donor is compatible with the first patient.

[71] Taylor, *Stakes and Kidneys*, 6.
[72] Lundin, *Organs for Sale*, 36.

When such pairs are matched, both transplantations take place simultaneously.[73] The act of altruistically donating via donating to someone else in return could be considered to be reciprocal altruism as the donors act altruistically towards their relatives via giving their organ to someone else and vice versa. Both parties (both donor-patient pairs) reach the same outcome they would reach without the other pair, each pair gains an organ for the patient.

Radcliffe-Richards claims that when speaking of altruistic acts there should not be made distinction between donation and sale as both of the acts have the potential to be altruistic in their nature. Radcliffe-Richards proposes a scenario in which a father saves his daughter's life by giving her a kidney and a second scenario in which a father sells his kidney to pay for his daughter's operation which will save her life. [74] In both of these scenarios, the actions which the father of an ill daughter undergoes in order to save her can be considered altruistic in their nature – he does them with the motivation of good for the other in mind (saving his daughter's life), he does not act out of the desire to gain anything for himself. Then why, would we suppose organ donation ethically superior to organ sale? Although Radcliffe-Richards' scenarios seem to be convincing on the grounds of organ sale and organ donation having the potential of being altruistic, it cannot be overlooked that the fact that both of the scenarios might be altruistic does not mean both of them are necessarily ethical. The first scenario – father giving his ill daughter his own kidney – is definitely both altruistic and ethically unproblematic. The problem comes with the second scenario which involves the father's kidney only as means to get money for the medical treatment which will save the daughter. In this case, organ sale is not the only solution to the problem (daughter's illness) as it is in the first scenario. Here, the father's kidney is used as means to get money which leads us to question why not sell anything else instead? What is the father's motive to get rid of his kidney when there are other ways of getting money (e.g. selling something else, such as a car)? The organ sale scenario also does not take into consideration the daughter's viewpoint. In case of organ donation, both parties have to consent with the act, the question of consent, however, remains unresolved in the organ sale scenario as the daughter is not directly partaking in the act of organ sale. She is a mere passive recipient of the treatment which will save her life but with whose payment she might not have agreed. This thus shows that while both of Radcliffe-Richards' scenarios have the potential to be altruistic, it is not very probable that they would always be ethically correct.

[73] Taylor, *Stakes and Kidneys*, 22.
[74] Radcliffe-Richards et al., "The case for allowing kidney sales," 1951.

### 4.3 Drop in numbers

The introduction of organ sale in Iran, the only state in the world which has legal state-regulated organ market, showed a worrying phenomenon – instead of rise in numbers of organs donated and sold, the number of organs obtained in total decreased. The numbers of posthumous donors significantly dropped.[75]

Even thought, we are provided with these facts, Taylor disagrees with the notion that introduction of organ sale would lessen the overall supply of organs for transplantation. Taylor supposes that people who considered donating posthumously[76] would not be less likely to decide against doing so with the introduction of organ sale, they might even participate in organ sale during their lifetime, which in result would not influence the overall number of organs for transplantation obtained. Taylor also points out that many people who were not interested in organ donation (both during their life time and posthumously) before would agree with the sale. In this regard, the number of organs available for transplantation would increase.[77]

With the regard to the question of altruism Sandel points out the fact that the organ which is sold rather than donated does not function differently; the organ keeps its function regardless of the way in which it has been obtained. Sandel proposes a scenario in which a person wants a Nobel Prize but fails to get one the usual way so they decide to buy the prize. While they can buy the object, the material representation of the prize, the prize itself cannot be bought. Nobel Prize is not something that can be bought, as it is an honorific good whose value would be dissolved once it entered the market. The fact that one might be able to buy a Nobel Prize undermines its value and honour, the bought prize would be of no value compared to a Nobel Prize with which someone was awarded.[78] As Sandel states, Nobel Prize is one of the things that money cannot buy. In the case of human organs, however, the sold and donated organ are the same. A sold kidney is of no less value than a donated one, it also keeps its function – both sold and donated kidney keep their function. Sandel thus concludes that the mere ability to sell and buy an organ without it dissolving the good (i.e. the organ functions, it does not lose its function in the way Nobel Prize loses its value) is not enough of a pro-organ sale

[75] Campbell, *The Body in Bioethics*, 43.
[76] The matter of consent in posthumous donation was dealt with in the introduction of this thesis, I will thus not go deeper into the matter again in this chapter.
[77] Radcliffe-Richards et al., "The case for allowing kidney sales," 1951.
[78] Sandel, *What Money Can't Buy*, 94-95.

argument. He asks whether human organs can and should be only thought of from a viewpoint of their function?

I agree with the direction where Sandel's line of argumentation is going. The question which remains after all is whether we choose to think that when something, in this case human organs, *can* be bought and sold whilst keeping their function, does it mean that they *should* be bought and sold?

## Conclusion

The motivation of this thesis was to try to find an answer to the question whether organ sale is morally permissible or whether it is not. I considered this question from perspective of three different ethical theories – deontology ethics, consequentialism, and libertarianism.

The structure of this thesis followed the four most frequently discussed arguments regarding organ sale. Those arguments being: 1. exploitation, commodification, and instrumentalisation of the seller and her body; 2. harm and risk that the seller undergoes; 3. concerns about autonomy and consent; and lastly, 4. concerns about the practice of free donation that would supposedly be undermined by the permission of organ sale. Each of these arguments was examined in detail in the individual chapters of this thesis.

In the first chapter concerning the question of exploitation of organ vendors, I have arrived at the conclusion that organ sale in its very core must be exploitative in order to be effective. What influenced this conclusion was the argument held by Taylor who stated that if organ sale was to be held within one state, people of first world countries would not be motivated to sell their organs as the price offered for an organ would not be interesting for them. Whereas the same price paid to organ vendors in the third world countries would present a great motivation to participate in organ sale. This argument also showed that organ sale is to be understood in international context, rather than in national context.

In the second chapter, which focused on harm and risk which the seller undergoes, I have established that some harm is a necessary component in organ sale as well as in organ donation, as organ vendors as well as organ donors must undergo a surgery in order to have an organ removed. The aspect of risk in organ sale was likened to that of "risky labour." In the end, I have criticised the view of Radcliffe-Richards who claims that organ vendors and organ donors undergo the same surgery and thus undergo the same harm and risks. I have disputed this claim on the grounds of organ sale including more risks as in current illegal organ market the vendors do not receive proper post-surgery treatment. This, however, does not happen to organ donors since organ donation is a legal procedure taking place in medically safe environment.

The third chapter, which focused on concerns about autonomy and consent of organ vendors, defined informed consent as a key requirement for organ sale. Informed consent was defined by Campbell as consisting of three conditions: competence, voluntariness and disclosure of

adequately supplied and understood relevant information.[79] In this chapter, I agreed with Campbell's view that the consent of organ sellers tends to be seriously compromised since one or more of the conditions for informed consent are usually not met. The inability to provide informed consent is also closely tied to Chapter 1 where a discussion about vulnerability which is defining part of the notion of exploitation, was held, as the lack of education or knowledge about the procedure of organ sale proves organ vendors unable to provide informed consent.

In the second part of Chapter 3, I discussed the concept of autonomy, which is closely tied to consent as only autonomous agent is able to provide valid consent. The notion that organ sale does not compromise autonomy of organ vendors was presented by both Taylor and Radcliffe-Richards, where they agreed that ban of organ sale restricts autonomy of organ vendors as it is a way for them to earn money in their dire financial situation. Taylor and Radcliffe-Richards propose that organ vendors must have weighed their other options for gaining money and decided organ sale to be the best option. I have argued that this argument cannot be viewed as valid as it clearly does not take into consideration the three requirements of informed consent proposed by Campbell. So even if organ sale was not autonomy restricting, I do not believe it to meet all three of Campbell's requirements and thus not gaining informed consent.

The last chapter inquired into the argument that introduction of organ sale would undermine the praxis of altruistic donation or even fully remove it. I have come to the conclusion that organ sale and organ donation both function on different basis; they each have different motivation – while the motivation of organ donor is that of bringing good to the others, the motivation of organ seller is the payment which she receives for her organ. Wilkinson and Garrard along with Taylor disagree with this argument and claim that by introducing organ sale, organ donors/vendors would be presented with the opportunity to be even more altruistic than ever before if they gave up not only their organ but also the payment for the organ that they receive.

The fact that organs *can* be sold and bought has already been proven by the bloom of illegal organ market. The only question which remains to yet be answered is whether we believe human organs to be something that *should* be sold and bought? The real answer to the organ sale discussion eventually lies in our viewpoint on markets and society. The relationship of

[79] Campbell, *The Body in Bioethics*, 41.

markets and society is constantly changing, this change depends on our view of markets, on how big of a role and scope of influence we assign to markets within our society. Sandel illustrates the changes in markets and attitudes towards them with slavery – back before the abolition of slavery, selling and buying of human beings was seen as a normal thing in regards to markets and also society, as the society believed that human beings can and should be bought and sold which created a space for market in human beings.[80] Nowadays, our thinking has changed and we do not believe any human beings should be bought and sold. This example shows how society collectively creates places for market. Market is created once society starts believing something (or in the case of slavery, someone) could and should be bought and sold. This example also shows that attitudes towards markets *can* and *do* change with time, what might have been regular practice in the 18th century might not even be regarded as legal nowadays.

As was stated many times throughout this thesis, organ sale is dependent on economical differences between sellers and buyers. The financial inequality between first world countries and third world countries, however, is not an unlimited resource. With the redistribution of wealth and countries raising the living standards of their citizens rather than receding, the notion of organ sale seems to have its time limitations. Since, as was stated in previous chapters, the inequality in economic situation and living standards is the key for organ sale, as only those who are in a bad financial situation would consider taking part in organ sale. Once the economical differences become less and less significant, I believe there would be no motivation left for people to sell their organs.

The time limitations of the concept of organ sale are also dependent on scientific progress in the field of organ transplantation. A recent example is animal organs which have been transplanted into human bodies. Would the possibility of obtaining organs for transplantation not only from human beings but also animals still make space for organ sale? Or let us suppose scientists one day find out a way how to create human organs artificially – would the organ sale discussion still be relevant?

Those are, of course, only hypothetical scenarios. The question which remains is whether we, society, as creators of markets want to create space for market in human organs and move the boundaries of markets even further.

[80] Sandel, *What Money Can't Buy*, 9-10.

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