# Fundamental Issues in Medical Jurisprudence

Organ donation for transplantation

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## Introduction

This essay will critically discuss whether only a market in organs can fully address the shortfall in supply to meet current demands for organ for transplantation in the UK. I will begin with an analysis of the effectiveness of an organ trade at countering the shortfall, which will be contrasted with the inadequacy of relying on an opt-out system. After having demonstrated the necessity of an organ trade to address the shortfall, a systematic discussion of the ethical and consequently legal concerns will follow, and the main arguments against such a trade will be refuted.

## Necessity of an organ trade

Deemed consent, assumes the presence of consent to the donation of organs after death, unless provided otherwise[1]. The UK shifted from an opt-in scheme to this model in the recent years, with Wales[2] leading the movement in 2015, followed by England[3] and Scotland[4]. Northern Ireland has recently begun their legislative process regarding a deemed consent bill[5]. One catalyst for this change can be ascribed to the family veto[6], wherein those in qualifying relationships[7] could refuse consent for the donation of organs from the deceased. However, the question relevant for this essay is whether the implementation of a deemed consent scheme is sufficient at addressing the organ shortage and consequently whether we must consider an organ market to supplement it. Although, prima facie, Wales now has the highest donation consent rates in the UK[8], the extent to which deemed consent can tackle the overall shortage is controversial[9]. For example, one study published in 2019 argues that the increase in consent rates in Wales cannot be attributed to the change in system; since there were comparable increases in the other UK nations who at that time still had an opt-in

[1] Lacobucci G. 'Organ donation: England will have "opt-out" system from May 2020', BMJ, 2020, 368.
[2] Human Transplantation (Wales) Act 2013.
[3] Organ Donation (Deemed Consent) Act 2019.
[4] Human Tissue (Authorisation) (Scotland) Act 2019.
[5] Organ and Tissue Donation (Deemed Consent) Bill.
[6] Ghorbani F, Khoddami-Vishteh H, Ghobadi O, Shafaghi S, Louyeh A, Najafizadeh K. 'Causes of family refusal for organ donation.', Transplant Proc, 2011, 43(2), 405-6.
[7] Sections 3(6)(c) and 27, Human Tissue Act 2004.
[8] Lacobucci G. 'Organ donation: England will have "opt-out" system from May 2020', BMJ, 2020, 368.
[9] Parsons J. 'Deemed consent for organ donation: a comparison of the English and Scottish approaches', Journal of Law and the Biosciences, 2021, 8(1), 3.

model[10]. Another article argues that opt-out policy will not solve the organ shortage[11]. This is particularly true when we consider the type of deemed consent put forward by the change: Namely, 'soft' deemed consent. Herein lies one of the issues with the change, the ability for the family veto to take effect still exists[12] – albeit evidence must be provided that the deceased would not have consented[13]. If we consider other countries that have implemented analogous models, such as Spain since 1979, there might be an argument for a correlation between the legislative change and an increase in donor rates. However, evidence suggests that fundamental changes in infrastructure contributed to the increase in Spain[14], and that one thing that is measurable, is that not all countries to partake in opt-out systems have seen an increase[15]. Finally, despite the opt-out system there is still a strong organ shortage in the UK[16]. Therefore, it is doubtful that merely implementing an opt-out scheme can adequately address the shortfall in supply to meet the current demand for organs for transplantation in the UK.

On the other hand, an Organ market shows much more promise. The only country to have introduced a legal organ trade is Iran, who did so in 1988. Only approximately 10 years later, the waiting list and shortage for renal transplants was eliminated[17,18,19]: in some regions there is now a waiting list to sell[20,21]. Statistics show that by the end of 2012, almost 30,000 kidney donations came from living persons whereas less than 5000 from deceased donors[22]. This demonstrates two things. Firstly, that in practice the organ market has proven that it can fully address the shortfall in supply to meet the current demand for organs for

[10] Noyes J, McLaughlin L, Morgan K, et al. 'Short-term impact of introducing a soft opt-out organ donation system in Wales: before and after study', BMJ Open, 2019, 9, 4.
[11] Bea S. 'Opt-out policy and the organ shortage problem: Critical insights and practical considerations', Transplantation Reviews, 2021, 35(1), 3.
[12] Parsons J. 'Deemed consent for organ donation: a comparison of the English and Scottish approaches', Journal of Law and the Biosciences, 2021, 8(1), 8.
[13] Section 3(6B), Human Tissue Act 2004.
[14] Matesanz R. 'Pros and cons of a regulated market in organs', Lancet, 2009, 374, 2049.
[15] Willis B, Quigley M. 'Opt-out organ donation: on evidence and public policy.', J R Soc Med, 2014, 107(2), 58.
[16] Potter J. 'Does the Iranian model of kidney donation compensation work as an ethical global model?', Online Journal of Health Ethics, 2015, 11(1), 3.
[17] Ghods A, Shekoufeh S. 'Iranian Model of Paid and Regulated Living-Unrelated Kidney Donation', CJASN, 2006, 1(6), 1139.
[18] D'Ambrisi D. 'Examining the Ethics of the Iranian Kidney Market', Kennedy Institute Bioethics, 2018, 2.
[19] Howard R, Cornell D. 'Ethical Issues in Organ Procurement and Transplantation', Intechopen, 2016, 129.
[20] Bastani B. 'The iranian model as a potential solution for the current kidney shortage crisis.', Int Braz J Urol, 2019, 45(1), 195.
[21] Howard R, Cornell D. 'Ethical Issues in Organ Procurement and Transplantation', Intechopen, 2016, 129.
[22] Ghods A. 'The history of organ donation and transplantation in Iran.' Exp Clin Transplant, 2014, 12(1), 38-41.

transplantation. There is no reason to believe this would not transfer to other western nations[23,24] such as the UK – money remains a persuasive motivator in capitalistic societies[25]. Secondly, the opt-out scheme is insufficient at addressing the organ shortage since it does not adequately address the living-donor market, unlike an organ trade. Additionally, donations from living donors provide a better prognostic outlook than donations from cadavers[26] and ethically such a market would be supported from a variety of different ethical frameworks – as will be discussed in greater detail below. Having demonstrated the necessity of an organ market, I will now critically explore the ethical concerns regarding such a trade.

## Role of emotions

There are numerous ethical concerns with an organ trade. One reoccurring theme however is the reliance on emotion through moral repugnance[27,28]. It comes as no surprise that the reflex reaction to an organ trade is repugnance: it is seen as inappropriate to attach monetary value to a part of our body, in a way similar to it being inappropriate to gift money instead of physical presents[29]. However, this innate negative perspective towards the prospect of an organ trade does not alone justify a hard paternalistic ban that infringes on our autonomy, could possibly save thousands of lives, and addresses the shortfall in the UK[30]. While emotions may lead to legislation and act as a catalyst, they must be supported by logical argumentation and reasoning by reference to concrete ethical frameworks. Therefore, it is vital for the following discussion to separate emotional reflexes from rational argumentation: If no such rational argument compliments these emotions in a way that

[23] Hammond S. 'How Iran Solved Its Kidney Shortage, And We Can Too', Niskanen Center, 2018.
[24] Potter J. 'Does the Iranian model of kidney donation compensation work as an ethical global model?', Online Journal of Health Ethics, 2015, 11(1), 17.
[25] Mona, M. 'Rechtsphilosophische Analyse der Entgeltlichkeit und Vertragsfreiheit in der Nierenspende — Verwerflicher Organhandel oder legitimes Anreizinstrument?', ARSP: Archiv Für Rechts- Und Sozialphilosophie, 2004, 90(3), 357.
[26] Koo D, Welsh K, McLaren A, Roake J, Morris P, Fuggle S. 'Cadaver versus living donor kidneys: impact of donor factors on antigen induction before transplantation.' Kidney Int, 1999, 56(4), 1551–1559.
[27] Mona, M. 'Rechtsphilosophische Analyse der Entgeltlichkeit und Vertragsfreiheit in der Nierenspende — Verwerflicher Organhandel oder legitimes Anreizinstrument?', ARSP: Archiv Für Rechts- Und Sozialphilosophie, 2004, 90(3), 361.
[28] Dunstan G. 'The ethics of organ donation', British Medical Bulletin, 1997, 53(4), 931.
[29] Mona, M. 'Rechtsphilosophische Analyse der Entgeltlichkeit und Vertragsfreiheit in der Nierenspende — Verwerflicher Organhandel oder legitimes Anreizinstrument?', ARSP: Archiv Für Rechts- Und Sozialphilosophie, 2004, 90(3), 360.
[30] Radcliffe-Richards J, Daar A, Guttmann R, Hoffenberg R, Kennedy I, Lock M, Sells R, Tilney N. 'The case for allowing kidney sales.', International Forum for Transplant Ethics Lancet, 1998 351(9120), 1951.

outweighs the positives of such a market, then by default in a free society valuing autonomy, such a market must be seen as permissible. I will now address and refute some of the most prominent arguments made against an organ trade, before concluding that an organ market is not only necessary, but a welcome addition to our society.

## Coercion

One of the frequent arguments voiced against opening an organ market, is that this would lead to the exploitation of the poor – coercing them into selling their organs[31,32,33,34]. Indeed, this was one of the reasons that was discussed during the consultation for the Human Tissue Act 2004[35], which outlaws an organ market[36], and is also argued by the WHO[37]. The argument focusses on the position of poor people, who have little to no other alternatives available to them, and as such they consider selling their organ. Their consent to sell their kidney is not genuine and voluntary due to the lack of alternatives and is instead coerced[38]. The claim centres on the idea of capacity of an individual, particularly those impoverished, and it is thus important to bear the Mental Capacity Act 2005 in mind, which regulates capacity. There are several possible rebuttals to this argument:

Firstly, I disagree with the allegation that merely by virtue of their socio-economic standing a person would lack capacity to consent to the selling of their organ. Not only does the Mental Capacity Act provide that capacity should be presumed[39], but the argument relies on a general assumption that a poor person would lack capacity. Just because an option is not the desired course; does not presuppose that I lack capacity to choose it and have instead been coerced into it[40]. By analogy: just because I lack ability to support my family solely by acting,

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[31] Bastani B. 'The iranian model as a potential solution for the current kidney shortage crisis.', Int Braz J Urol, 2019, 45(1), 195.
[32] Dworkin G. 'Markets and morals: the case for organ sales.', Westview, 1994, 157.
[33] Borna S. 'Morality and Marketing Human Organs', Journal of Business Ethics, 1987, 6(1), 37.
[34] Potter J. 'Does the Iranian model of kidney donation compensation work as an ethical global model?', Online Journal of Health Ethics, 2015, 11(1), 2.
[35] McGinness S, Mellows-Facer A. 'The Human Tissue Bill', House of Commons Library, 2004, Bill 9, 28.
[36] Section 32, Human Tissue Act 2004.
[37] D'Ambrisi D. 'Examining the Ethics of the Iranian Kidney Market', Kennedy Institute Bioethics, 2018, 1.
[38] Mona, M. 'Rechtsphilosophische Analyse der Entgeltlichkeit und Vertragsfreiheit in der Nierenspende — Verwerflicher Organhandel oder legitimes Anreizinstrument?', ARSP: Archiv Für Rechts- Und Sozialphilosophie, 2004, 90(3), 370.
[39] Section 1(2), Mental Capacity Act 2005.
[40] Mona, M. 'Rechtsphilosophische Analyse der Entgeltlichkeit und Vertragsfreiheit in der Nierenspende — Verwerflicher Organhandel oder legitimes Anreizinstrument?', ARSP: Archiv Für Rechts- Und Sozialphilosophie, 2004, 90(3), 371.

does not mean that I have been coerced into instead pursuing a life-endangering job[41] working in a mine[42], or joining the military. Similarly: just because I am poor does not mean that I have been coerced into selling my only pair of shoes[43]. The law does not interfere with my autonomy in those situations – why should it prohibit my choosing to sell my kidney? Following the coercive argument invites the conclusion that those in poverty would never have capacity to act and attempt to escape their destitute situation[44,45], since all autonomous free decisions would be deemed as being a product of coercion.

Secondly, even by conceding that there may be certain situations where an organ transaction is predicated on coercion, this does not support the idea of an overall ban. Put differently: the mere possibility that someone impoverished may be exploited and coerced does not justify a hard paternalistic ban on an organ trade that would help said individual escape their circumstances; save lives; and counter the organ shortage. If this were the logic, then an organ donation should similarly be disallowed, for with donations there equally exists the possibility of coercion and pressure by family members that may well invalidate the donor's capacity[46,47,48]. The issue of possible exploitation and coercion must be weighed against the possible advantages: paternalism must be weighed against autonomy. On such a weighing, it seems grossly excessive to instate a hard paternalistic ban, when mere soft paternalism would suffice – which leads onto my third point.

Thirdly, the desired goal of protecting vulnerable individuals can be achieved just as well through a system of soft paternalism. Take for example the treatment of non-directed (altruistic) donors by the NHSBT. These donors are required to undergo psychological assessments that explore their situation, circumstances, understanding of the risks and the

[41] Savulescu J. 'Is the sale of body parts wrong?', J Med Ethics, 2003, 29, 139.
[42] Slabbert M. 'Ethics, justice and the sale of kidneys for transplantation purposes', PELJ, 2010, 13(2), 96.
[43] Mona, M. 'Rechtsphilosophische Analyse der Entgeltlichkeit und Vertragsfreiheit in der Nierenspende — Verwerflicher Organhandel oder legitimes Anreizinstrument?', ARSP: Archiv Für Rechts- Und Sozialphilosophie, 2004, 90(3), 372.
[44] Duxbury N. 'Do Markets Degrade?', The Modern Law Review, 1996, 59(3), 345.
[45] Dworkin G. 'Markets and morals: the case for organ sales.', Westview, 1994, 157.
[46] Bastani B. 'The iranian model as a potential solution for the current kidney shortage crisis.', Int Braz J Urol, 2019, 45(1), 195.
[47] Kishore R, 'Human organs, scarcities, and sale: morality revisited', J Med Ethics, 2005, 31, 364.
[48] Slabbert M. 'Ethics, justice and the sale of kidneys for transplantation purposes', PELJ, 2010, 13(2), 95.

general process[49]. The donor is then given an assessment via an Independent Assessor who ensures that they are not being coerced into donating[50]. This practice could simply be extended to those (poor) people wanting to sell their organs: They similarly must undergo assessments that confirm the already-existing presumption that they have capacity and are not being coerced or exploited. Furthermore, if this is insufficient, there could be an introduction of a 'cool-down' period[51], whereby a given period of time must pass before an additional assessment of their mental health occurs to once again reaffirm that they still have capacity.

Fourthly, and touching upon the discussion regulation, an open market provides a much safer alternative to a black-market. There is a wealth of studies that illustrate the benefits of an open market compared to a black-market, not only that, but they highlight how the harms associated with the activity (coercion for example) often are a result of the prohibition[52] and that regulated markets can reduce such exploitation[53,54]. As the situation stands, data shows that currently rich individuals from countries such as the UK, are able to exploit those in destitute conditions under a black market[55,56]. Viewed from a principilistic perspective, a regulated market would favour the principle of non-maleficence, as will be discussed below in more detail, since it presents the least harmful option[57].

Finally, and rhetorically, is it really in the best interest of poor people to take away their only potential legal option to participate economically in society and to attempt to ameliorate

[49] Organ Donation UK. 'Donating a kidney to someone you don't know' < https://www.organdonation.nhs.uk/become-a-living-donor/donating-your-kidney/donating-a-kidney-to-someone-you-dont-know/> [accessed: 20/12/2021].
[50] Organ Donation UK. 'Donating a kidney to someone you don't know' < https://www.organdonation.nhs.uk/become-a-living-donor/donating-your-kidney/donating-a-kidney-to-someone-you-dont-know/> [accessed: 20/12/2021].
[51] Hammond S. 'How Iran Solved Its Kidney Shortage, And We Can Too', Niskanen Center, 2018.
[52] Ambagtsheer F, Weimar W. 'A Criminological Perspective: Why Prohibition of Organ Trade Is Not Effective and How the Declaration of Istanbul Can Move Forward', American Journal of Transplantation, 2012, 12, 572.
[53] Major R. 'Paying kidney donors: time to follow Iran?', Mcgill J Med, 2008, 11(1), 69.
[54] Potter J. 'Does the Iranian model of kidney donation compensation work as an ethical global model?', Online Journal of Health Ethics, 2015, 11(1), 2.
[55] Bastani B. 'The iranian model as a potential solution for the current kidney shortage crisis.', Int Braz J Urol, 2019, 45(1), 194.
[56] Major R. 'Paying kidney donors: time to follow Iran?', Mcgill J Med, 2008, 11(1), 67.
[57] Radcliffe-Richards J, Daar A, Guttmann R, Hoffenberg R, Kennedy I, Lock M, Sells R, Tilney N. 'The case for allowing kidney sales.', International Forum for Transplant Ethics Lancet, 1998 351(9120), 1950-2.

their circumstances[58, 59, 60, 61]? Considering all of this with reference to the overall benefits with an organ trade – the lives saved, economic opportunity, and countering the organ shortage – I find it difficult to support an argument that is predicated merely on the possibility of coercion arising, especially when this could be addressed through the soft-paternalism addressed above.

## Ignorance

A second argument often invoked against an organ trade is that of general ignorance and lack of knowledge on the process and the consequences[62]. This goes hand-in-hand with coercion. The former considers the diagnostic side of the Mental Capacity Act 2005[63]. This discussion moves to the functional element: Does the individual grasp the information relevant to such a medical procedure[64]. Crucially, there are three points to bear in mind when dissecting this stance.

Firstly, this argument does not justify a hard paternalistic ban on all organ trades: Instead, as discussed above, a soft paternalistic approach could extinguish the concerns associated with this claim. The NHSBT procedures would similarly ensure that the capacity of the individual and consent is bona fide, and that they are able to understand, retain, weigh, and communicate the information pertaining to the medical procedure and its consequences. Ethically, just as with the argument of coercion, this would ensure that consent has been legitimately obtained and as such would conform with deontological standards[65] (ensuring the ethical legitimacy of the action itself), as well as consequentialist – since the organ trade results in a net positive[66].

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[58] Mona, M. 'Rechtsphilosophische Analyse der Entgeltlichkeit und Vertragsfreiheit in der Nierenspende — Verwerflicher Organhandel oder legitimes Anreizinstrument?', ARSP: Archiv Für Rechts- Und Sozialphilosophie, 2004, 90(3), 371.
[59] Bastani B. 'The iranian model as a potential solution for the current kidney shortage crisis.', Int Braz J Urol, 2019, 45(1), 195.
[60] Potter J. 'Does the Iranian model of kidney donation compensation work as an ethical global model?', Online Journal of Health Ethics, 2015, 11(1), 7.
[61] Kishore R, 'Human organs, scarcities, and sale: morality revisited', J Med Ethics, 2005, 31, 364.
[62] Mona, M. 'Rechtsphilosophische Analyse der Entgeltlichkeit und Vertragsfreiheit in der Nierenspende — Verwerflicher Organhandel oder legitimes Anreizinstrument?', ARSP: Archiv Für Rechts- Und Sozialphilosophie, 2004, 90(3), 373.
[63] Section 2, paragraph 22, Explanatory notes on Mental Capacity Act 2005.
[64] Section 3(1), Mental Capacity Act 2005.
[65] D'Ambrisi D. 'Examining the Ethics of the Iranian Kidney Market', Kennedy Institute Bioethics, 2018, 4.
[66] D'Ambrisi D. 'Examining the Ethics of the Iranian Kidney Market', Kennedy Institute Bioethics, 2018, 3.

Secondly, the argument reveals a sense of hypocrisy from those who wield it. Can it really be the case that individuals only display this sense of 'ignorance' in the context of selling organs, but not in the context of donating? Finally, as with the element of supposed coercion, provided that the individual is deemed to have capacity and can legitimately consent, it is their prerogative to decide what they do with their body from an autonomy perspective. The Mental Capacity Act makes this clear: "*A person is not to be treated as unable to make a decision merely because he makes an unwise decision*."[67]. It is not for society or government to deem what is best in our situation and to handle individuals with such hard paternalism. Indeed, there seems to be little paternalism if one chooses to smoke – knowing the negative ramifications of such a decision – since they are seen as having autonomy over their body[68,69].

## Altruism

The negative impact an organ trade would have on the current altruistic nature, is another oft-cited argument[70,71,72]. There are two glaring issues with this stance. The first is illustrated by a weighing exercise. Does the possibility that there may be reduced, or no altruistic donations justify a hard paternalistic ban on an organ market that would alleviate the organ shortage, save thousands of lives, bolster our autonomy over our body, and provide an escape for the poor[73]? I would argue that it does not: Especially from a consequentialist viewpoint. Secondly, there may not necessarily be such a feared reduction in altruistic donations. In theory, the possibility still exists to donate rather than sell an organ. In practice, Iran has shown that there are still altruistic organ donations, particularly those by the deceased. This is evidenced by the statistics discussed in the first few paragraphs:

[67] Section 1(4), Mental Capacity Act 2005.
[68] Bastani B. 'The iranian model as a potential solution for the current kidney shortage crisis.', Int Braz J Urol, 2019, 45(1), 195.
[69] Savulescu J. 'Is the sale of body parts wrong?', J Med Ethics, 2003, 29, 139.
[70] Bastani B. 'The iranian model as a potential solution for the current kidney shortage crisis.', Int Braz J Urol, 2019, 45(1), 195.
[71] Dworkin G. 'Markets and morals: the case for organ sales.', Westview, 1994, 160.
[72] Potter J. 'Does the Iranian model of kidney donation compensation work as an ethical global model?', Online Journal of Health Ethics, 2015, 11(1), 15.
[73] Dworkin G. 'Markets and morals: the case for organ sales.', Westview, 1994, 159.

Approximately 4000 deceased kidney donations were made by the year 2012 in Iran, an increase of about 3000 since 2005[74]. Both altruistic and paid donations can co-exist.

### Wealth exploitation and irreversibility

There are then a class of arguments that can swiftly be extinguished. Firstly, the argument that such an organ market will predominantly benefit the rich who can out-bid others, and as such will further the wealth inequality in society. In the situation of the UK, this would not be the case. This essay is advocating for a market to encourage the sale of organs; not a market to buy the organs. Organs sold would simply be treated as any other organs donated by the NHSBT[75]. There would not exist the possibility to purchase an organ or to bid on an organ and thus out-compete those in a worse socio-economic situation[76].

Secondly, there is also the concern associated with the irreversible and potentially harmful, if not deadly, procedure when selling an organ[77]. The counter stance is an obvious one: If we can tolerate these risks with an organ donation, then we can tolerate them with an organ sale – especially since the latter opens up advantages that the former doesn't: saving additional lives, an economic source for the poor, and so on. To humour this ground further, Dworkin contends that we permit other acts that can involve similar risks and consequences without deploying hard paternalistic bans and instead giving way to autonomy[78] - such as sterilisation. Interestingly, if we take this stance in conjunction with the general perception of ignorance and capacity as a whole, it appears to be a guise for paternalism. As discussed in those sections, provided the individual is deemed to have capacity, they can consent to a procedure – regardless of whether or not society would view the decision as unwise[79]. Indeed, case law has shown that we permit the rejection of a blood transfusion on religious grounds[80], in this instance the advanced refusal of a Jehovah's witness and the implicit

[74] Ghods A, Shekoufeh S. 'Iranian Model of Paid and Regulated Living-Unrelated Kidney Donation', CJASN, 2006, 1(6), 1137, 1140.
[75] NHSBT, 'How does the offering system work?', < https://www.nhsbt.nhs.uk/organ-transplantation/kidney/receiving-a-kidney/how-does-the-offering-system-work/> [accessed: 20/21/2021].
[76] Dworkin G. 'Markets and morals: the case for organ sales.', Westview, 1994, 158.
[77] Mona, M. 'Rechtsphilosophische Analyse der Entgeltlichkeit und Vertragsfreiheit in der Nierenspende — Verwerflicher Organhandel oder legitimes Anreizinstrument?', ARSP: Archiv Für Rechts- Und Sozialphilosophie, 2004, 90(3), 381.
[78] Dworkin G. 'Markets and morals: the case for organ sales.', Westview, 1994, 158.
[79] Section 1(4), Mental Capacity Act 2005.
[80] Newcastle upon Tyne Hospital Foundation Trust v LM [2014] EWCOP 454.

expression of autonomy and sovereignty outweighed the potential paternalism in saving their life. The potential autonomy to refuse life saving treatment is clearly more severe and irreversible in nature than the paternalism we deploy with regard to selling our organ.

## Slippery Slope

The slippery-slope sophistry is often brought up against an Organ trade[81]. The argument takes the line that an open organ market would bring us close to the precipice, if we start to sell our body parts, we will start to sell our souls[82] or our bodies akin to slavery. To refute this argument, I will first break down the structure. It relies on the assumption that if we legalise A (kidney trade) we will soon legalise B (heart trade), until we find ourselves having legalised everything including Z (selling our bodies), for if we permit A, why should we not also permit B and so on. Prima facie, this sophistry often works as persuasive, relying heavily on metaphors and extremes[83]. However, when broken down logically the argument falls apart on two grounds.

Firstly, the slippery slope works both ways[84]. On the one hand, the right to free speech may lead us to the precipice where we legitimise overt racism. On the other hand, the ban on over racism may lead us to the precipice where we introduce a general ban on free speech. Secondly, and crucially, it is false to presume that although we permit A we will consequently also permit B. There may be very good reasons to allow A and not B. In the situation at hand, there exists very good reasons to permit a kidney trade when weighed with the negatives – economic viability for the poor, countering of the organ shortage versus the mere possibility of coercion or potential injury involved. However, this does not necessarily mean that this rationale applies to a heart trade, where death would be imminent, or to selling our bodies – where we would forfeit all autonomy.

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[81] Mona, M. 'Rechtsphilosophische Analyse der Entgeltlichkeit und Vertragsfreiheit in der Nierenspende — Verwerflicher Organhandel oder legitimes Anreizinstrument?', ARSP: Archiv Für Rechts- Und Sozialphilosophie, 2004, 90(3), 385.
[82] Kass L. 'Organs for sale? Propriety, property, and the price of progress', The Public Interest, 1992, 107, 83.
[83] Mona, M. 'Rechtsphilosophische Analyse der Entgeltlichkeit und Vertragsfreiheit in der Nierenspende — Verwerflicher Organhandel oder legitimes Anreizinstrument?', ARSP: Archiv Für Rechts- Und Sozialphilosophie, 2004, 90(3), 386.
[84] Mona, M. 'Rechtsphilosophische Analyse der Entgeltlichkeit und Vertragsfreiheit in der Nierenspende — Verwerflicher Organhandel oder legitimes Anreizinstrument?', ARSP: Archiv Für Rechts- Und Sozialphilosophie, 2004, 90(3), 386.

## Commodification and general ethics

I would like to conclude the critical analysis of different arguments against an organ trade by exploring a keen ethical argument that is frequently invoked. Deontology, particularly Kantianism, introduces the idea that our body ought not to be a means to an end, but the end itself[85,86,87]. Assigning a market value to our organ results in objectifying and commodifying our body and treating it as a means[88,89,90] – which from this viewpoint is ethically reproachable. This anti-commodification stance is similarly espoused by international instruments[91]. However, there are three issues with this argument.

Firstly, it is fallacious as organ donations are seen as permissible, yet similarly commodify the body[92]. The organ in a donation is still viewed as an object and by extension the body is too, used for a specific end. This renders both a means to said end[93]. Secondly, organ donations are not inherently altruistic nor absent of any non-financial beneficial considerations. Often a donation is motivated by the desire to save a life or secure comfort[94] - further reinforcing the parallels illustrated in the first point. Thirdly, as Dworkin argues, we currently have the ability to legitimately sell our blood, hair, or sperm - which would render that ethically illegitimate[95,96,97]. However, we do not stop to question such sales[98] – the distinction I believe lies in the consequences and severity of an organ sale – that of losing a kidney and potentially risking death compared with hair that merely grows back. Therefore, the crux lies less with the deontological concerns and more with the irreversibility of such a sale – which has been discussed above as a non-issue. Therefore, we see that an organ trade is not inherently

[85] Kant I. 'Groundwork for the Metaphysic of Morals', Cambridge University Press, 2012, 2.
[86] Slabbert M. 'Ethics, justice and the sale of kidneys for transplantation purposes', PELJ, 2010, 13(2), 85.
[87] Howard R, Cornell D. 'Ethical Issues in Organ Procurement and Transplantation', Intechopen, 2016, 130.
[88] Borna S. 'Morality and Marketing Human Organs', Journal of Business Ethics, 1987, 6(1), 39.
[89] Dworkin G. 'Markets and morals: the case for organ sales.', Westview, 1994, 159.
[90] Potter J. 'Does the Iranian model of kidney donation compensation work as an ethical global model?', Online Journal of Health Ethics, 2015, 11(1), 8.
[91] Article 4(1)(b), Council of Europe Convention against Trafficking in Human Organs 2018, CETS No. 216.
[92] Alpinar-Sencan Z. 'Reconsidering Kantian arguments against organ selling', Med Health Care and Philos, 2016, 19, 23.
[93] Alpinar-Sencan Z. 'Reconsidering Kantian arguments against organ selling', Med Health Care and Philos, 2016, 19, 26.
[94] Kishore R, 'Human organs, scarcities, and sale: morality revisited', J Med Ethics, 2005, 31, 363.
[95] Dworkin G. 'Markets and morals: the case for organ sales.', Westview, 1994, 160.
[96] Major R. 'Paying kidney donors: time to follow Iran?', Mcgill J Med, 2008, 11(1), 68.
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contrary to a deontological framework. Instead, could conform to it, provided that the consent to the transaction has been adequately obtained – which it would be, as discussed above in relation to regulation through soft paternalism[99]. Therefore, the act of selling an organ, similar to donating an organ, would not be innately contrary to deontology when predicated on ethically obtained consent.

An organ trade similarly coincides with other ethical frameworks. Throughout the essay I lean on consequentialist views which focus on the principle that the ends justify the means, provided the end results in a net-gain of happiness[100,101]. Implementing such a market would fulfil this[102]: thousands of lives would be saved, and society would be stimulated economically. Furthermore, moving away from rule and consequence based ethical theories, the trade aligns with the ethical system of communitarianism: the needs of the individual are balanced along the needs of society. An organ trade favours society, as discussed above in relation to Iran, with the ability to address the shortage in organs.

Finally, from the perspective of principilism, which is often hailed as the foundational principles for all bio-ethical judgments[103], an organ market conforms with each of the four tenants[104]. Unlike other ethical frameworks, principilism is also rooted in international instruments globally. The Universal Declaration on Bioethics and Human Rights refers to each of the four tenants of principilism[105]. I will now discuss each of the four principles in light of an organ market, continuously relying on the work provided by Beauchamp and Childress[106].

The first principle corresponds to autonomy over our body: Beauchamp and Childress understand autonomy to involve a form of self-rule free from limiting constraints[107]; i.e genuine consent[108]. For an act to be considered autonomous it must be backed with

[99] D'Ambrisi D. 'Examining the Ethics of the Iranian Kidney Market', Kennedy Institute Bioethics, 2018, 4.
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[105] Articles 4, 5 and 10, Universal Declaration on Bioethics and Human Rights, United Nations Educational, Scientific, and Cultural Organization, 2005.
[106] Beauchamp L, Childress F. 'Principles Biomedical Ethics', OUP, 2001, 5.
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intention and understanding of the actions and consequences – free from outside control[109]. The preceding discussion relating to capacity demonstrates a compliance of the organ trade with these three conditions: the individual would act out of their own choosing, understanding of the decision and freedom from outside interference can be established through the soft paternalistic checks[110].

The second principle involves beneficence: one must act and do good towards others. In this context an organ trade could be considered to be generally beneficent[111], since it involves an act by an individual that would benefit and do good for another unknown individual.

The third principle is that of justice: in the context of organ donations this refers to the concept of distribution of these scarce resources. This has similarly been addressed above, and the distribution of sold organs would follow suit and reflect the distribution of donated organs through the NHSBT – ensuring an ethical allocation.

The final principle involves non-maleficence. The concept here pertains to an obligation to not harm individuals or to do so in the least harmful way affordable. There are three levels on which an organ trade conforms with this ideal. Firstly, an organ market presents the least harmful opportunity, in comparison with the black-market alternative which induces significantly more exploitation and harm[112]. Secondly, as discussed with coercion, the lack of an organ trade harms those in poorer financial situations, since it deprives them of a means to economically improve their circumstances. Thirdly, any counter argument is weak, since we permit organ donations that are equally as harmful with no tangible benefit to the donor. Therefore, an organ trade is compliant with the four principles of principilism, as well as in line with deontological, consequentialist and communitarian viewpoints.

[109] Potter J. 'Does the Iranian model of kidney donation compensation work as an ethical global model?', Online Journal of Health Ethics, 2015, 11(1), 5.
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[112] Radcliffe-Richards J, Daar A, Guttmann R, Hoffenberg R, Kennedy I, Lock M, Sells R, Tilney N. 'The case for allowing kidney sales.', International Forum for Transplant Ethics Lancet, 1998 351(9120), 1950-2.

## Conclusion

In conclusion, the organ market can fully address the shortfall in supply to meet current demands for organ transplantation in the UK. Iran has seen a shift from waiting lists for organs to waiting lists to donate an organ. Throughout the essay, I have considered and refuted some of the prominent arguments raised against an organ trade. In lieu of any countervailing arguments, weighing the positives of an organ market – countering the shortfall, economically stimulating society, and acknowledging autonomy – alongside of the ethical frameworks which would support it – consequentialism, deontology, principilism and communitarianism – this essay has shown that an organ market is not only necessary and effective, but provides other ethically supported social advantages.

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