

Chapter 6

DONATING OR SELLING ORGANS

The idea of legalizing the buying and selling of human organs for transplantation is frequently raised in the contemporary era, mainly in the Western world which has the financial resources for buying organs. The proponents of this idea claim that legalization could reduce the problem of the scarcity of donors and donations, leading to the saving of human life or at least, significant improvement of the quality of life of those who receive the organs. Another claim made in favor of the legalization of the trade of human organs is that it may actually assist poverty-stricken individuals, or individuals in debt, to ameliorate their economic distress by allowing them to sell their organs.

Another less-common claim in favor of legalizing the selling of human organs is that this may reduce the terrible phenomenon where “living people have their organs stolen for their cash value, or even worse, are killed so that their organs can be ‘harvested’ and sold.”¹ This claim is strengthened by “worrying reports (from several countries including Brazil, India, Israel, and the Philippines) of body parts being stolen both from cadavers and from living hospital patients. These parts are said to include whole eyes (not only the cornea), bone, skin, pituitary glands, and heart valves.”² Even though this claim may present a strong utilitarian argument, I choose not to include this kind of illicit and malicious organ trade in my discussion. I do not want to cloud the legitimacy of such a complicated issue with such overtly evil and criminal behaviors, though I realize that they exist. A more official and formal reason is the assumption that “Both ethics and the law in the West recognize the importance of respecting self-determination

¹ Wilkinson Stephen. *Bodies for Sale*. Routledge, London, 2003, p. 101.

² Wilkinson brings a list of sources for the above suspicions on p. 230, endnote 3.

or autonomy when it comes to people capable of making their own choices,”³ as Timothy Murphy reminds us. However, I use the informed consent doctrine as only a formal argument in support of my view; my true reason for ignoring this claim is its malicious background, which makes it difficult to provide sincere arguments for or against it. When the basic assumption is that “Every human being of adult years and sound mind has a right to determine what shall be done with his own body,”⁴ it is clear that harvesting organs without the donor’s consent is illegitimate and evil and I see no need to dwell on that. So, I content myself with examining the situation where both seller and buyer traffic in human organs on a purely voluntary basis.

Legalization may seem to be a win–win situation as the interests of both sides can be promoted—those who need human organs for transplantation, and donors who need financial remuneration—leading to an improved quality of life of both sides. However, in order to reduce the danger of abuse of such legalization by speculators, profiteers or criminals, the demand to legalize the traffic in human organs usually includes the demand that this must be operated and managed by the State or other official health authority. This health authority would have to create an orderly, ethical, and acceptable framework for regulating the acquisition and transplantation of human organs for therapeutic purposes, and prevent coercion, exploitation, and abuse of such arrangements.

However, we must make an essential distinction between the selling of two kinds of organs: organs from a live, presumably healthy person and organs from a dying individual. Of course, there are limits to the type of organs a healthy individual can donate without compromising that person’s own health, while many of the organs needed for transplantation can only be harvested from a dying person (such as the heart, liver, pancreas, and both lungs). We also stipulate that the buying and selling of organs would not be left to the open market, but confined to some kind of official authoritative health body. This health authority would distribute the organs through impartial considerations without charging the parties involved, which means that the government would cover the costs involved and not the persons who receive the organs (nor their health insurance). These stipulations must be taken into account when we examine the idea of allowing the trade of human organs.

Another stipulation for harvesting human organs from healthy people is that it must be confined to adults who explicitly express their informed and autonomous consent. We must never accept the consent of a person’s legal custodian or relatives, in order to reduce the risk of exploitation of minors and mentally retarded

³ Murphy Timothy F. *Case Studies in Biomedical Research Ethics*. The MIT press, Cambridge Massachusetts, 2004, p. 53.

⁴ Dickenson Donna. *Risk and Luck in Medical Ethics*. Polity Press, Cambridge, 2003, p. 66. Dickenson cites there from *Schloendorff v. Society of NY Hospitals* (1914), but this is the general attitude of the US law to the doctrine of informed consent.