**Department of Philosophy, Linguistics and Theory of Science**

# Forced to Sell or Forced to Give

Assessing whether autonomy-based arguments justify prohibiting paid living organ donation while permitting unpaid living organ donation

**Sara Persson**

Essay in practical philosophy, 15 HP
FP1300
Spring 2022
Supervisor: Erik Malmqvist

# INDEX


**I. Introduction** 3

**II. Background** 4

**A regulated market and the black market** 5

Relevance 5

Reliability 6

**Arguments against the sale of human organs** 7

Harm 7

Exploitation 8

Human Dignity 9

Autonomy 9

**III. Autonomy** 10

**Circumstantial coercion** 10

**Interpersonal coercion** 16

**Identification with the act** 21

**IV. Conclusion** 24

**References** 25

# I. Introduction

Altruistic living organ donation is a life saving practice. Countless lives have been saved because individuals have given up a part of themselves to save another that they hold dear[1]. When an organ is freely given we tend to see the giver as noble, but if payment for the organ is involved the act mutates into something odious and forbidden[2]. A widespread concern is that payment disrupts the 'freely given' aspect of the act, and that payment puts undue pressure on agents acting in these situations. That payment disrupts the autonomy, consent and voluntariness of the act. There is, however, also pressure in altruistic donation. The family needs a donation to save a loved one, and they can exert social pressures to achieve this goal. I will therefore ask if there is an essential difference regarding autonomy, consent or voluntariness between paid and unpaid donation that justifies prohibiting the former while permitting the latter[3].

I will argue that sufficiently similar pressures exist in altruistic donation, and that there is no substantial or essential difference in altruistic and paid donation regarding autonomy, consent and voluntariness. I shall first compare the external circumstances around altruistic donation to that of the expected circumstances of paid donation and whether these circumstances amount to coercion and restrict the autonomy of agents. I shall argue that these circumstances are similar in essential ways and that in principle we do not have reasons to treat these circumstances differently. Then I will investigate arguments based on interpersonal coercion and examine whether these arguments justify treating altruistic and paid donation differently, I will argue that we find no such reason. Finally I consider if there may be reasons internal to the agent that justify treating the autonomy of agents differently in the case of altruistic and paid donation, and whether this constitutes an essential reason for the differing treatment. I do not find an essential difference. I therefore

---

[1] Organ Procurement and Transplant network. (1988-2022). National Data. Living Donor Transplants By Donor Relation https://optn.transplant.hrsa.gov/data/view-data-reports/national-data/#

[2] World Health Assembly. (2010). Human organ and tissue transplantation. https://apps.who.int/iris/bitstream/handle/10665/3096/A63_R22-en.pdf?sequence=1&isAllowed=y

Transplantation Society, International Society of Nephrology. (2008). The Istanbul Declaration. https://www.declarationofistanbul.org/the-declaration

[3] There is a distinction to be made here about legal permissibility, as in how we should legislate, and of moral permissibility, as in which individual actions are right or wrong. My focus for this discussion regards legal permissibility.

conclude that these autonomy-based arguments do not establish an essential difference in regards to altruistic and paid donation that allows us to treat the acts differently.

## II. Background

Before getting into the essay in full we must first establish what considerations should be kept in mind while reading and what considerations should be kept aside. My aim is to examine whether the arguments from autonomy that oppose paid donation work to support our current difference in treatment between altruistic and paid donation. Therefore I need to make clear from what vantage point I make the comparison.

First, the relevant type of organ donation is living organ donation and not cadaveric organ donation, which is organs procured from the deceased. Living organ donation is donations of organs that a donor can continue to live a healthy life without, such as a kidney or a part of the lung, liver or pancreas. The most common type of donation, and the one I will use as a comparison, is directed altruistic living donation. Directed altruistic living donations tend to come from family members, but more seldomly also come from close friendships. Non-directed altruistic living donation on the other hand is very rare, and occurs when an individual donates an organ to a stranger. I do not consider this type of donation as problematic for the autonomy of agents, and the conclusions drawn from this essay will therefore only relate to directed altruistic living donation in relation to paid donation. I will from here on out refer to directed altruistic living donation as unpaid donation, and the donors of such a donation will simply be referred to as unpaid donors.

Secondly, when considering under what conditions an agent is selling an organ I will assume that the sale is made in a regulated market. As such I will compare the selling of an organ and the unpaid donation of an organ in the context of a regulated market. For clarity I will touch on what this market may look like and whether the very real black market holds relevance to my discussion in the next section. From here on I shall refer to the act of selling an organ as paid donation[4], and I will refer to the seller in such a donation as paid donors or vendors.

[4] The use of the term paid donation is somewhat controversial, since the act of donating usually refers to a gift given without expectation of payment.

## A regulated market and the black market

When regarding the permissibility of a market in human organs we should examine the position not from the worst case scenario, but from the expected consequences. Paid donation is illegal in most of the world and where regulation exists it might not be regulated as we would wish. However, most of our empirical evidence comes from the black market. It is doubtful if all the conclusions drawn from this research are applicable to a regulated market, but we also cannot dismiss the evidence out of hand. There are many suggestions on how to best regulate a market to minimise and limit the negative effects of the black market. In my discussion I will assume a regulated market as conceptualised by Erin and Harris[5]. Erin and Harris' proposal contains three essential features that aim to deal with the problems of the black market.

Firstly, they suggest the market should be monopsonistic, meaning only one institution or state is able and responsible for buying and distributing the organs in a given region. This makes the vendor's organs available only to their countrymen or regional compatriots, and would ensure that poor nations don't become organ banks for rich nations or regions. It also secures fair distribution, where an organ is distributed on grounds of medical need. Secondly, the payment one receives for the sale of an organ should be fixed and significant, ensuring that a seller is well compensated while not making the price irresistible. Thirdly, the health of the vendors is of high priority, ensuring that vendors are of good health before any donation as well as instituting good aftercare, and they should also be given greater priority if they are in need of an organ in the future.

The black market does not contain these features, and neither does the existent regulated market, such as the one in Iran. As previously stated, almost all empirical evidence we have is from the black market. We must therefore ask both of the relevance as well as the reliability of the data collected.

### Relevance

If a regulated market aims to deal with the issues regarding the black market, the empirical evidence from the black market seems to be of low relevance. This, however, does not give

[5] Erin CA, Harris J. (1994) A monopsonistic market—or how to buy and sell human organs, tissues and cells ethically. In: Robinson I, ed. Life and death under high technology medicine. (p. 134–53) Manchester University Press in association with the Fulbright Commission

us cause to simply dismiss the data, since we also lack data whether the attempts to regulate would be successful. It rather gives us pause and should encourage us to investigate whether any specific conclusion is of relevance, and whether the empirical evidence is used in good faith. On the black market, vendors are routinely deceived, underpaid and suffer bad health outcomes[6]. We do assume that in regards to unpaid donation, the fears about deception and bad health outcomes may be sidestepped with sufficient safeguards[7]. This assumption may be faulty, but if we consider the regulation in regards to unpaid donation acceptable, is it not then reasonable to assume that similar safeguards could be put in place in regards to paid donation in a regulated market? However, not all objections against a regulated market are formed on grounds of agents being deceived, underpaid or suffering worse health outcomes. Regulation may not be able to deal with all of these objections. Social ramifications and regret might be cases where regulation is not as effective and this is cause for concern. So any discussion on the permissibility of a market in human organs must give answer to the concerns raised by the research. It is, however, clear that we cannot directly apply the empirical evidence from the black market onto a regulated one as they are different beasts, and any application of the data should be justified by more than simply pointing at the numbers.

There is research done in a regulated context, namely that from Iran. But Iran does not regulate their market with the same care and consideration for negative effects as suggested by Erin and Harris. It is not a monopolistic market and it is not closed. Any conclusions drawn from such studies therefore need to be seen as suggestive rather than definitive.

**Reliability**

We must also ask whether the empirical evidence is reliable. Many empirical studies suffer from qualitative issues, such as the lack of controlled studies in regulated contexts, and they suffer from quantitative issues, such as a lack in the number of studies as well as the small

---

[6] Shimazono, Y. (2007). The state of the international organ trade: A provisional picture based on integration of available information. Bulletin of the World Health Organization. 85, 955-962
Goyal M, Mehta RL, Schneiderman LJ, et al. Economic and health consequences of selling a kidney in india. JAMA (2002). 288(13), 1589-93

[7] Wright, L., Faith, K., Richardson, R., Grant, D., & Joint Centre for Bioethics, University of Toronto, Toronto, Ont (2004). Ethical guidelines for the evaluation of living organ donors. *Canadian journal of surgery. Journal canadien de chirurgie*, *47*(6), 408–413.

sample sizes (most studies have less than 200 participants). A survey of the current research conducted by Shimazono concludes that any results from the existing literature needs to be regarded as "provisional and tentative", and they call for further research[8]. If we must draw careful conclusions from the empirical evidence, we should also be careful when regarding the data in a further context, namely that of a regulated market.

It is also hard to discern if the participants in the existing literature are representative of their group as a whole. Paid donation is generally illegal, and few are willing to take part in research and make it known they have sold an organ. We may therefore not know if the participants in these studies constitute a fair representation of the group or if they rather represent the ones most dissatisfied with their sale, and therefore are the most motivated to take part in the research. The research is then not an ideal starting point when considering the outcomes for vendors in a regulated market.

I must therefore conclude that there is a great deal of epistemological uncertainty in regards to paid donation, a point we should keep in mind for the rest of my discussion.

## Arguments against the sale of human organs

Arguments against the sale of human organs in a regulated market take many shapes, and they may all answer the question of whether there is an essential difference between paid and unpaid donation differently. To thoroughly examine all types of arguments is beyond the scope of this essay, I will, however, briefly touch on the form of these arguments to situate my discussion in the broader debate.

### Harm

Opponents to a regulated market of human organs often appeal to the harms such a market may burden the vendors with. These harms may concern the physical, psychological, social or the financial wellbeing of the vendors. It is argued that these harms can not be compensated for by the benefits of a market (such as the saving of human lives), and that regulation will not be able to remove or minimise these harms sufficiently. Koplin argues as such, concluding that a regulated market is insufficient to secure the well being of the

[8] Shimazono, *op. cit.* note 5.

vendors[9]. However, it must be said that the argument often rests on the empirical evidence from the black market, which, as argued above, must be taken with a grain (or handful) of salt, and even if we concede that a regulated market is insufficient to secure the well being of the vendors, this does not establish that such a market is significantly different from a system of unpaid donation. We must first establish that similar harms do not exist in such a system.

**Exploitation**

Other opponents appeal to the exploitative nature a regulated market may take[10]. It is uncontroversial to assume that the majority of paid donors would be poor. It is therefore argued that the market would be exploitative on these grounds. Even if paid donation was safe, well paid and socially acceptable, the well off would likely not take part in the act of vending. The poor would then become our suppliers, and the scar left from the act would leave a clear and unambiguous class marker on the vendor, distinguishing the poor from the well off by its physical presence. Furthermore the poor are more likely to suffer from poor health as a consequence of their economic status[11]. This might further be a cause to worry about the exploitative nature of a market in human organs, as the most likely to suffer from poor health are also the ones most likely to vend. On examination we may find similar exploitation in unpaid donation, or we may not. There are clear trends in which groups tend to be the unpaid donors, these tend to be women and family members of lower status[12]. If these trends constitute exploitation to a similar degree we should have similar reasons for a prohibition of unpaid donation as we do paid donation.

---

[9] Koplin J. (2014). Assessing the Likely Harms to Kidney Vendors in Regulated Organ Markets. The American Journal of Bioethics, 14(10), 7-18. doi:10.1080/15265161.2014.947041

[10] Koplin, J.J. (2018). Beyond Fair Benefits: Reconsidering Exploitation Arguments Against Organ Markets. Health Care Analysis. 26, 33-47

[11] Tinson, A. (2020). Living in poverty was bad for your health long before COVID-19. The Health Foundation. https://www.health.org.uk/publications/long-reads/living-in-poverty-was-bad-for-your-health-long-before-COVID-19

[12] Thiel, G. T., Nolte, C. & Tsinalis (2005). Gender Imbalance in Living Kidney Donation in Switzerland. Transplant Proc., 37(2), 592-594. doi:10.1016/j.transproceed.2004.12.279

Scheper-Hughes, N. (2007). Tyranny of the Gift: Sacrificial Violence in Living Donor Transplants. American Journal of Transplantation, 7, 507-511. doi:10.1111/j.1600-6143.2006.01679.x

**Human Dignity**

Some opponents appeal to the irreducible value of human beings. Kerstein argues from a Kantian perspective that paid donation would constitute treating another human being as a mere means, and it therefore fails to respect the irreducible value of the vendor[13]. To allow for such a market would then be immoral. We therefore have moral grounds for a prohibition on the sale of human organs. Unpaid donation may similarly treat the unpaid donor as a mere means, such as when parents have more children to secure the health of an older sibling. Some parents even go so far as to select which embryo to implant after a genetic analysis, as to ensure the compatibility of the would-be donor[14]. This does seem to treat the would-be donor as a mere means, as their entire existence is dependent on them becoming an unpaid donor. On examination we may find that the duties one has to one's family supersede other duties and allow for a different treatment of these cases, or we may find that these cases are just as problematic for human dignity.

**Autonomy**

Many opponents appeal to the autonomy of agents, and argue that the autonomy is compromised in paid donation. The autonomy compromising aspect may both come from economic pressures as well as social pressures, and it is argued that these pressures should be regarded as undue influence on an agent's ability to sell. If we can not guarantee the voluntariness or autonomy of vendors we should not allow an organ market. It may however be said that sufficiently similar pressures exist in unpaid donation, and under examination we may not be able to justify a difference in treatment regarding paid and unpaid donation. This is what I will argue in the remainder of this essay. Therefore the conclusions I draw in this essay only relate to the autonomy of agents in paid and unpaid donation. Potential harms, exploitation and disregard for the dignity of vendors will therefore not be of relevance to my discussion and may be set aside.

[13] Kerstein, S. J. (2009). Autonomy, Moral Constraints, and Markets in Kidneys. Journal of Medicine and Philosophy, 34, 573-585. doi:10.1093/jmp/jhp046

[14] Spriggs, M. Savulescu, J (2002). “Saviour siblings”. Journal of Medical Ethics. 28, 289

# III. Autonomy

In simplified terms, an agent is autonomous when they decide what to do for themselves. Central to the concept is being able to act, deliberate and reflect based on one's own reasons and motives, free from manipulation and other distorting external forces. We should also distinguish freedom from autonomy, freedom relates to the range of options open to an agent while autonomy regards independently and authentically choosing an act.

In the debate regarding paid donation it is argued that distorting external forces are present which keeps agents from acting voluntarily. This lack of voluntariness puts into question whether an agent is in actuality able to decide for themselves to sell. The argument is that certain circumstances exert undue influence on an agent's autonomy, and may induce or coerce a certain type of act from the agent. In the context of paid donation, two versions of this idea can be distinguished: first, that an agent may be coerced to sell an organ by the economic situation they find themselves in, as in that they are coerced by poverty, and second, that there may be interpersonal pressures that exert a coercive force on the agent's will to sell. Both versions tend to assume that unpaid donation is without such controversy. That is, both the circumstantial coercion argument and the interpersonal coercion argument assume that a difference in treatment between paid and unpaid donation may be preserved. We should, however, ask if the pressures on paid donors are substantially different from the circumstantial and interpersonal pressures unpaid donors face, and whether these pressures equally can be argued to coerce the unpaid donors to act in non-autonomous ways.

## Circumstantial coercion

Which external factors limit an agent's autonomy depends on what circumstances we think autonomy requires, and under what conditions we regard an agent as being able to decide authentically what to do for themselves. Olsaretti suggests that voluntariness and autonomy depends on the availability of attractive options to the agent[15]. An agent is considered as able to act autonomously if, before any choice, they have multiple alternatives to choose between, where all or some of them can be regarded as acceptable or attractive to the

[15] Olsaretti, S. (1998). Freedom, Force and Choice: Against the Rights-Based Definition of Voluntariness. The Journal of Political Philosophy, 6(1), 53-78.

agent. If only one such alternative is available, the option needs to be desired by the agent to such a degree that they would choose it even if other attractive alternatives were available. So an agent could still be considered as acting autonomously if they at least have one alternative that they regard as attractive enough that they would choose it even under a different circumstance, where many other attractive alternatives were available. An agent cannot then voluntarily choose an act when all options available to the agent are unattractive or when the act which they deem the most attractive in such a situation would not be chosen in a different context. What this implies about the autonomy and voluntariness of giving up an organ is that it depends a great deal on what circumstance the paid or unpaid donation occurs under. Let us first consider which circumstances are reasonable to assume a paid donor would be in before a sale.

It is uncontroversial to assume that the majority of paid donors would be poor, or at the very least economically unstable. This simply for the reason that they would gain the most economically in relation to their current situation by deciding to sell.

Economic pressures can, and often do, constrain behaviour. Many of the decisions we make regarding how we live our life need, and do, take into account how we will make money. The question is if these economic pressures are sufficient to make certain options, such as selling a kidney, attractive enough that they would be elected for even though the agent does not desire the option and would not have chosen it in other circumstances. Hughes argues that the economic pressures the poor face are sufficient to severely constrain behaviour, and compares the selling of an organ under poverty with acting under duress in criminal law contexts[16]. In criminal law, acting under duress constitutes compelled behaviour and limits responsibility. An agent is less culpable for the acts performed, and they are not regarded as acting fully autonomously. Acting under duress does not, however, completely remove responsibility, it only limits its degree. If poverty or economic instability is sufficiently strong as to put an agent in duress, the act of selling an organ may become incompatible with autonomy. This does seem to depend a great deal on the unique situation a potential vendor is in when undertaking the act. A paycheck can be acquired in many ways, as there is seldom only one option an agent can undertake to secure one's economic future. The selling of an organ could constitute only one of the ways to secure economic assets. The

[16] Hughes, P. M. (2009). Constraint, Consent, and Well-Being in Human Kidney Sales. The Journal of Medicine and Philosophy, 34, 606-631. doi:10.1093/jmp/jhp049

case would have to be made that there are no attractive alternatives for the poor individual to make money, and that selling an organ is an unattractive option only chosen for lack of the alternative. This is an empirical question we can not assume the answer to. Though we may consider situations where it might seem to be the only option. Long term unemployment in a nation suffering high unemployment rates, might be such a case. If that nation also does not give economic support to care for those suffering with no income nor give economic support to the further education of such a population, that might strengthen the case for the selling of an organ as an unattractive option only taken in duress. Though we should not assume that this would be the appearance of every or even most such cases, however, it informs us that such cases could and maybe would be likely to exist. If regulation could handle this pressure is also unsure. Regardless, poverty seems in some ways to limit what an agent is able to dismiss as an option. We should then regard poverty as a circumstance in which the availability of attractive alternatives is limited.

However, there is also a case to be made that a similar forced situation is present regarding unpaid donation, and this is my first objection to the circumstantial coercion argument; Olsaterri´s conception of autonomy, even if correct, fails to differentiate between the circumstances surrounding paid and unpaid donation and therefore does not allow us to treat the two types of donation differently.

The pressure felt from the circumstances that surrounds unpaid donation are not dissimilar from the circumstances surrounding paid donation, though they take different shapes. Both paid and unpaid donation face few, if any, acceptable alternatives of action in regards to their donation. In unpaid donation the circumstantial coercion felt is not in regards to the economic pressure that limits one's options, but simply the fact that there are only a few available options to choose from. Options, none of which are particularly attractive, and would not be chosen if the situation did not force one to act. When a loved one is in need of an organ there are three alternatives; cadaveric donation, living donation and doing nothing. Cadaveric donation is limited as there are more people in need of organs than cadaveric donation today provides, and many people die waiting on an organ that will never come. The success of cadaveric donations compared to live donation is also relevant, as a receiver of an organ will fare better if it came from a living donor compared to an organ from someone deceased. Doing nothing is no real choice when a loved one's life is hanging in the balance. The only active choice a loved one can take in such a situation, if they are a

match, is to donate an organ to save their loved ones life. There may, however, be an alternative in which family member may donate, and this may limit or lessen the pressure on specific agents, as the many possible ways of making money may limit the pressure on paid donation. But the choice of donating and not donating may be no real choice, and there is not always a sea of willing donors available.

There is also a complication of the moral implication of doing nothing when one is a match. If an agent is able to save a loved one by donating an organ and chooses not to, it places some of the responsibility of the death of the loved one on the would-be donor. We may then consider a moral circumstance as coercive to a certain degree. There also seems to be circumstantial coercion in regards to culture when considering unpaid donation. Women are more likely to give and less likely to receive in unpaid donation, and this can not be accounted for simply by comparing the different health status of men and women[17]. Thiel, Nolte and Tsinalis argue that this discrepancy is influenced both by cultural norms and economic differences in the sexes. Women have the role of caregivers and men tend to be the breadwinners in the family. So in unpaid donation there may exist circumstantial economic coercion, similar to that of paid donation, where the family members that contribute less to the financial stability of a family become the unpaid donors. Furthermore, this circumstantial cultural coercion also gives women a cultural role as caregivers that makes saying no to unpaid donation unavailable. The moral obligation, cultural norms, economic context and the clear lack of actual alternatives should then be regarded as possible coercive circumstances in unpaid donation.

There seems to be a limitation in the availability of attractive alternatives in unpaid donation as well as in paid donation. If autonomy is dependent on the availability of attractive alternatives, neither of these actions seem to be able to be undertaken voluntarily and autonomously by agents. Such a conception of autonomy then fails to make a distinction in regards to autonomy and paid or unpaid donation.

My first objection to the circumstantial coercion argument has assumed that the underlying theory supporting it - according to which autonomy requires the availability of attractive options - is correct. My second and third objection question that theory.

[17] Thiel, G. T., Nolte, C. & Tsinalis op. cit. note 11.

My second objection to the circumstantial coercion argument is that what makes an alternative attractive is undefined. It is not clear whether the options should be interpreted in a subjective, or in an objective way. That is, it is unclear whether the attractiveness is dependent on the agent's own feelings toward the option or if it is dependent on other factors. If the available options' attractiveness depends on the agent's feeling towards them, any option seems to be able to be both desired and undesired, attractive and unattractive, depending on the agent viewing them. Take the option to live out of one's car, some agents see it as a dreadful option only taken up if no other option was available, while others actively seek it[18]. There is a great diversity of preferences between individuals, and with a subjective view we will struggle to condemn or praise any type of act, in principle, on grounds of autonomy and voluntariness. Every choice would have to be considered in its specific circumstance and regarding its specific agents.

If we assume an objective view on defining what options are attractive we instead seem to rest a lot of our assumptions about acceptability on cultural preferences. Any baseline of acceptability we try to define would assume preferences that it should be doubtful we can find without our specific social context. It could be argued that an objective view about acceptability is possible, given certain reasonable assumptions about human psychology. If human beings innately regard bodily integrity as highly valuable this could give us cause to forbid organ donation. However, it seems to rob autonomy of all neutrality, and acts that agents freely choose after careful authentic internal deliberation, without external manipulation, may be regarded as non-autonomous, as the agent's choice may not align with common acceptability. With an objective view autonomy becomes something reserved only for agents that desire and value lifestyles and acts that fit into already accepted acceptability.

My third objection to the circumstantial coercion argument is that this conception of autonomous action generates counterintuitive conclusions. It makes many choices we assume to be autonomous non-autonomous, and conflates freedom with autonomy[19]. Instances of desperate need would in many cases be sufficient to undermine consent.

---

[18] Monroe, R. (2017, 24 April). #Vanlife, the Bohemian Social-Media Movement. The New Yorker. https://www.newyorker.com/magazine/2017/04/24/vanlife-the-bohemian-social-media-movement

[19] Wilkinson, M. & Moore, A. (1997). Inducement in Research. Bioethics, 11(5), 373-389. doi:10.1111/1467-8519.00078

Undergoing cancer treatment is such an instance. Suffering from cancer places one in a desperate situation and in a state of duress. Cancer treatment is gruesome and not something one would decide to undergo if one was not suffering from the disease. Choosing to undergo cancer treatment is only something one does because the alternative, death, is worse. So an agent suffering from cancer would not be able to autonomously choose to undergo cancer treatment because they clearly lack attractive alternatives. Similarly, this conception would make it questionable whether a poor agent ever could have any autonomy in regards to their economic situation. The capitalist system we all live under makes the possibility for a poor agent to choose not to earn an income no real choice, and *any* work the agent chooses could be said to be coerced and non-autonomous.

So either autonomy does not necessarily depend on the availability of attractive options or we can never voluntarily choose to either work or to undergo cancer treatment. A counterintuitive conclusion which suggests we should abandon Olsarettis conceptions of voluntariness.

Instead of basing autonomy and voluntariness on the quality and quantity of the choices placed in front of us, we may instead focus on autonomy as in when an agent authentically decides what to do for themselves. Availability of attractive options is not what is important. What is of importance is informed consent, when an agent is able to deliberate on the alternatives and their possible outcomes and decide for authentic reasons and motives to choose the act. As suggested by Wilkinson and Moore an agent is able to act autonomously when they have an understanding of the choice or set of choices in front of them, when they are able to carefully deliberate on the possible outcomes and when they choose to act authentically, without manipulation[20]. Desperate need is not sufficient to undermine autonomy or voluntariness and one can consent to undergo cancer treatment. Acquiring consent when considering paid or unpaid donation is dependent on ensuring that agents have full understanding of what the likely, as well as possible, effects of the donation are and that they are able to assess and reflect on the act and then decide for themselves what action they would like to take.

If autonomy depends on the availability of attractive alternatives, we should not find a difference in the autonomy of agents in regards to paid and unpaid donation. If we regard

[20] Wilkinson, M. & Moore, A. op. cit. note 18

unfortunate circumstances as insufficient to invalidate autonomy, it is still possible that interpersonal coercion invalidates the autonomy of paid and/or unpaid donors, which I will discuss in the next section.

## Interpersonal coercion

Under the principle of informed consent it is possible for agents to be able to autonomously decide to give up a part of themselves, for love or economic gain. However, not all possible donations should be considered as free from interpersonal coercion, and we need to investigate whether paid or unpaid donations face differing levels of interpersonal coercion, and whether this justifies a difference in treatment. Coercive influence involves a threat of worsening the affected agent's situation, and interpersonal coercion is when that threat comes from a specific individual. Not all threats are coercive and threats come in degrees. Whether there is coercion involved in any specific case depends on where we draw the line in what constitutes significant and credible harm[21]. A threat needs to constitute a significant and credible harm to be regarded as a coercive threat. Interpersonal coercive threats or pressures may take many forms and come in many different degrees. Compare having a gun to your temple under threat to give up your money or pay with your life, to being in church and asked to give a big donation with all your friends and family around you. Having a gun to your head with a threat to your life makes the option of not paying the robber no real choice, and an agent is not acting autonomously or voluntarily when they choose to give what they have to keep their life. Not donating in church does not have the same force behind it. Your family and friends may implicitly or verbally threaten to be very upset and ashamed of you if you do not donate, and you may know that not donating would make you appear stingy and unflattering, but it does not mean you are coerced to donate. The threat does not seem to be significant enough to reach the level of coercion.

What is at issue is if the interpersonal pressures and threats in regards to paid and unpaid donation are likely to overstep where we draw the line for significant harm, and whether they constitute coercion. If we deem the threat significant enough, we must ask

[21] Anderson, S. (Summer 2021 Edition) "Coercion", *The Stanford Encyclopedia of Philosophy.* Edward N. Zalta (ed.) https://plato.stanford.edu/archives/sum2021/entries/coercion/

whether paid and unpaid donations face differing degrees of severity regarding the interpersonal coercion they face.

Malmqvist argues that the payment in paid donation, in and of itself, constitutes a greater risk of interpersonal coercion, as it makes parts of your body an economic asset[22]. This economic asset can in theory be sought after by anyone, and family members or debt collectors might threaten violence onto the agent to make them agree to vending. Debt that a debt collector had previously given up on as ever being able to collect might now be seen as possible to procure since the indebted agent now has a way to procure income, namely vending. Similarly a family member that values a paycheck over their loved ones' health might threaten an agent into vending. An agent may not wish to take such an option, and will come to regret it. However, vending may still be undertaken to alleviate the interpersonal pressure felt by the agent. Sales on the black market do seem to have instances of just this type of interpersonal coercion, where a seller is pressured or coerced with threats of violence into giving up an organ, as a way to settle their family members or their own debts[23]. As previously stated, there is an epistemological uncertainty when applying this data to a regulated market. So we should be careful and not draw too strong conclusions from this research, and we need to consider whether the demand on sellers in a regulated market would be as strong as Malmqvist suggests.

I shall argue that the interpersonal threats agents face in a regulated market will not be sufficient to regard this type of pressure as coercive. This is my first objection to the interpersonal coercion argument, and I will aim to show that in a regulated market the interpersonal pressures agents experience will be sufficiently different both in quantity and quality from the black market such that we may sidestep the issue of interpersonal coercion.

Halpern et al. conducted an empirical study trying to assess the willingness of the American population to become sellers[24]. The study suggests that vending is a more attractive option than usually assumed, and there may be more potential willing vendors

---

[22] Malmqvist, E. (2014). Are Bans on Kidney Sales Unjustifiably Paternalistic?. Bioethics, 28(3), 110-118. doi:10.1111/j.1467-8519.2012.01984.x

[23] Goyal M, Mehta RL, Schneiderman LJ, et al. *op. cit.* note 3.
Cohen, L, (1999). Where it hurts: Indian material for an ethics of organ transplantation. Daedalus. 128(4), 135-65.

[24] Halpern, S. D., et al. (2010). Regulated Payments for Living Kidney Donation: An Empirical Assessment of the Ethical Concerns. Annals of Internal Medicine, 152(6), 358-65. doi:10.7326/0003-4819-152-6-201003160-00005.

than what is required to meet demand. In the USA there are currently 106 000 individuals waiting for an organ[25]. Not all of these can come from living donations, but the great majority can. With a population of 329 million demand could be met if as few as 0.03% of the American population were willing to donate. Furthermore, after the initial demand has been fulfilled, the need for organs would lessen as waiting lists would shrink and become very short or non-existent. If vending is more appealing than previously thought then there could be stiff competition amongst the potential vendors. Semrau argues that this difference in number between the possible vendors and the ones in need would make the pressure from family members and debt collectors sufficiently low to disregard the possibility of interpersonal coercion[26]. Certainly this stiff competition would mean that fewer agents would be put under this type of interpersonal coercion or pressure. It is, however, unclear if the fact that few can be put under this pressure actually diminishes the pressure on individual agents. If the pressure would still exist for some we might still regard this as a risk to the autonomy of agents. What instead could limit this type of pressure would be if the expectation of applying to vend would be that very few get accepted as applicants, and fewer still successfully manage to become paid donors. To meet the initial demand in the USA one in 3000 would need to be willing to sell, and if, as the study suggests, the willingness of vendors is a lot higher than previously assumed[27], very few of those willing to sell will in actuality be able to do so. Vending would then become relatively rare in the population, and in the eyes of a debt collector or greedy family member, an agent's body would not be regarded as an effective economic asset, as it would be difficult to convert it into the desired good, namely money. It would be more likely that greedy family members and debt collectors would suggest other avenues for the agent to undertake to procure a paycheck, and the act of vending would likely not fall victim to interpersonal coercion.

Whether the willingness of vendors would turn out to be this high is however uncertain. As with the case of the empirical evidence from the black market, both the relevance and reliability of the research on the willingness of agents to sell is up for debate.

---

[25] Health Resources & Services Administration. (2022). organdonor.gov https://www.organdonor.gov/learn/organ-donation-statistics#:~:text=There%20are%20currently%20over%20106%2C000,and%20Transplantation%20Network%20National%20Data.

[26] Semrau, L. (2015). The best argument against kidney sales fails. Journal of Medical Ethics, 41(6), 443-46

[27] In the study 20-50% of participants expressed willingness to vend in a range of different circumstances.

More studies exploring the willingness of vendors is necessary, and whatever results we conclude from such studies should be regarded with care, as agreeing to the theoretical possibility of vending is quite different from doing so in actuality. The study, and others like it, does however suggest that we are misguided when we assume that vending is something few, if any, voluntarily would choose.

If I have failed to convince you that a regulated market can deal with this type of pressure, we may for the moment set aside the question. Instead we must ask whether unpaid donation is without such coercion. Scheper-Hughes argues that it is not and this is my second objection to the interpersonal coercion argument[28]. There is a social expectation and obligation on family members to sacrifice for the family, and we make these sacrifices in a myriad of ways. We sacrifice our time, energy and resources to help and support our family. In unpaid donation this pressure to sacrifice is not only felt internally, as in the guilt one feels for letting a loved one die, but it could also be felt externally, from family members expecting, threatening and pressuring the donor with a duty to donate. Drawing on her ethnographic research, the anthropologist Scheper-Hughes describes how there is a lot less altruism in unpaid donation than we first assume. Our view of the family as a loving unit, with reciprocal relationships and selfless love may not accurately reflect the actual dynamic of many families facing unpaid donation. In unpaid donation the family's expectation claims ownership over the donor's body, and severely limits what is acceptable behaviour of the donor. As Schepner-Hughes describes, the complicated and private nature of family dynamics can make it hard to parse out when a donation is truly volunteered, and not actually coerced. An unpaid donor might fear ostracization, condemnation and withdrawal of the goodwill many family members expect from one another. This interpersonal pressure could be, and is used as an effective tool to pressure or coerce a family member to give their organs even though they do not wish to do so.

The key question we must ask is whether this pressure or threat of ostracization reaches the level of significance of coercion. I would argue that fear of ostracization from the family is a significant threat, and should be regarded as coercion. As a social species we depend on our loved ones, not only for security, but also for our mental and physical health. A review of the literature suggests we experience ostracisation as pain akin to physical pain,

[28] Scheper-Hughes, N. op. cit. note 11.

and that many seem to prefer being hurt physically, such as being punched, over being ostracised. This pain felt from ostracization is also linked to feelings of depression and anxiety, aggression and violence[29]. Furthermore, ostracization affects our ability to reason[30]. The fear of being deprived of the love and goodwill from one's family is then very serious, and we should not regard it as a small threat. Hence, we fail to find a principal difference between paid and unpaid donation in regards to the significance of the threat.

It could instead be argued that the difference in treatment is in regards to the frequency of the threat; that this type of coercion is likely to be more common in paid than in unpaid donation, and that this justifies prohibiting the former while allowing the latter. Yet, when discussing the frequency of the threat we must make clear what we are comparing. Unpaid donation exists in a regulated system, where safeguards are put in place to limit the interpersonal coercion agents may face before any such donation[31]. Paid donation, in comparison, is without such safeguards. Subsequently, comparing the frequency of the threat in unpaid donation occuring in a regulated system to that of the frequency of the threat in paid donation occurring on the black market is an unfair comparison. We therefore need to return to the question of a regulated market's ability to minimise and limit the pressure put on potential vendors. This is dependent on several factors. Firstly, it is dependent on the willingness of agents to sell compared to the demand, secondly, it is dependent on the societal beliefs of the likelihood of procuring an income by becoming a vendor, and thirdly it is dependent on whether we believe that the safeguards put in place are sufficient. I've previously discussed the willingness of vendors, and if we assume a regionally locked market as proposed by Erin and Harris, the demand would be kept relatively low compared to the population of any region[32]. Similarly, with demand kept relatively low it seems that the societal expectation of vending would be that relatively few succeed at procuring an income in such a way, lessening the frequency of the threat from interpersonal coercion. This I have already argued. Still, you may not be convinced, and

---

[29] MacDonald, G., Leary, M.R. (2005) Why does social exclusion hurt? The relationship between social and physical pain. *Psychological Bulletin*, 131, 202–223.

[30] Baumeister, R.F., Brewer, L.E., Tice, D.M., & Twenge, J.M. (2007) The need to belong: Understanding the interpersonal and inner effects of social exclusion. *Social and Personality Psychology Compass*, 1, 506–520.

[31] Wright, L., Faith, K., Richardson, R., Grant, D., & Joint Centre for Bioethics. op. cit. note 6.

[32] Erin CA, Harris J. op. cit. note 4.

whether this lessens the pressure put on individual agents sufficiently rests on an empirical uncertainty. However, I find it reasonable to assume that such regulation would reduce the threat's frequency to some degree, even if it might be naive to assume it would reduce it completely.

We seem then to need to ask whether safeguard could be put in place to secure the voluntariness in vending. These safeguards would aim to help any agent in an autonomy compromised position, by educating as well as informing the agent of the possibility of, in confidentiality, saying no to such a procedure. Doctors should also be educated as to recognise when agents' autonomy is compromised and disallow such agents from vending. It is assumed that such safeguards in unpaid donation do secure the voluntariness of the act. Nevertheless, as Shepner-Hughes demonstrates, these safeguards are insufficient to completely secure agents' autonomy in unpaid donation. However, the safeguards do seem to lessen the frequency of the threat of interpersonal coercion, and I find it reasonable to assume that the safeguards would work similarly towards paid donation. Once again, when discussing the frequency of the threat it is unfair to make such a comparison between the regulated system of unpaid donation to the unregulated black market of paid donation.

Instead we should ask what level of autonomy compromising risk we are willing to take in either donation. Unpaid donation does come with a certain level of risk and paid donation similarly would likely come with some risk as well. We might regard it as an acceptable risk or we might not, but importantly, it does not call for a difference in treatment between paid and unpaid donation. I do not find that external forces, such as the circumstantial and interpersonal coercion, call for a difference in treatment between paid and unpaid donation. I shall then finally examine whether we can find such a difference when regarding the internal forces at play in the agent and whether the authenticity of choosing to sell and choosing to give may differ.

## Identification with the act

If authenticity is of importance in an agent's ability to act autonomously, we need to consider what makes an act authentic, and whether it is possible to authentically decide to vend as well as give away an organ. Frankfurt argues that for an agent to act autonomously

they must have a free will[33]. For an agent to have a free will they must have a will that is in line with their higher order desires. For an agent to be regarded as acting autonomously they should not simply want to perform a certain act, but also want to want the act. They should be able to identify with and endorse the act as their own, and be able to discern simple desires from authentic ones. Simple desires can, and often do, conflict. Such as wanting to be healthy and wanting to never work out. These simple desires or wants are regarded as first-order desires. Authentic desires are the first-order desires that we endorse, and constitute the wanting of a first-order desire, as in not only wanting to be healthy but identifying with that desire, so one wants to have the desire to be healthy, and with this identification and endorsement, an agent distances themselves from the desire to never work out. This identification is regarded as second-order desires.

In organ donation there may be many conflicting first-order desires, and they may differ in paid and unpaid donation. Unpaid donations may include first-order desires such as wanting to save a life, and wanting to keep their bodily integrity. Bodily integrity and donation conflict. Similarly we may find in paid donation that an agent has a want to earn an income and a want to keep their bodily integrity, which also constitutes conflicting desires. One can not donate and keep their bodily integrity, the act of donating in and of itself constitutes a disruption or division of one's body.

Identifying with earning an income may be regarded as somewhat more difficult than identifying with saving a life. And this might constitute a substantial difference between the act of selling and the act of giving. It might be that an agent may more easily distance themselves from their want of bodily integrity when the conflicting desire is the saving of a life compared to when it is a desire to earn an income. Though the agent in the paid donation may not simply have the first-order desire to earn an income, rather this desire to earn an income is a desire for something else, such as the ability to feed oneself and one's family. To keep a roof over one's head and make life better for oneself as well as one's loved ones. Furthermore, the component of saving a life is present in paid donation as well as in unpaid donation, though in unpaid donation it is not only to save a life but to save the life of a loved one. The personal connection one has to the individual being saved might more strongly affect the ability to identify with the act of giving compared to the act of selling, but

[33] Frankfurt, H.G. (1971). Freedom of the Will and the Concept of a Person. The Journal of Philosophy. 68(1), 5-20

vending might similarly have one's loved ones in mind, therefore making the act of selling an act one can easily identify with. Though, we cannot assume that all cases of vending have the betterment of the lives of one's loved ones in mind.

However, since second-order desires come about through a self-appraisal, where an agent internally identifies and endorses a desire, we end up in a similar situation as when discussing the attractiveness of alternatives. We can conceive of agents being fully capable of identifying with earning an income over bodily integrity. Professions such as being a soldier or adult film star seem to be careers one can identify with and choose authentically but that both constitute disruptions to the agent's bodily integrity. A soldier continually puts their life on the line in their work, sacrificing their bodily integrity for an income as well as other first-order desires. It might not be common to identify with earning an income over bodily integrity, but we do not need it to be common. Only common enough to meet the demand. As stated previously, there is a diversity of preferences and desires, and authenticity should not have to be measured to a common standard. Identification with the act of selling or the act of giving does not then seem to account for an essential difference in treatment between paid and unpaid donation.

Furthermore, there is also an issue with this conception of autonomy. The conception aims to safeguard autonomy from influence of our more base desires. First-order desires are regarded as vulnerable to influence and manipulation. Drug addiction, depression, anxiety, and simple tiredness or hunger all seem to influence what first-order desires we have. Though it is unclear why second-order judgement is safe from similar influence. Our second-order desires could be just as tainted as our first-order desires. So second-order desires should also be in need of justification. This introduces an infinite regress, where our first-order desires are justified by our second order desires, and they in turn are justified by our third-order desires and so on[34].

I do not think we can find a reason to treat paid and unpaid donations differently in regards to the ability to identify with the act. I find it possible to authentically identify with the act of selling as well as the act of giving, and the conception of authenticity from second-order desires I find problematic in and of itself.

[34] Christman, J. (1991). Autonomy and Personal History. Canadian Journal of Philosophy. 21(1), 1-24

## IV. Conclusion

I find that from my discussion there is no essential difference in regards to the autonomy of agents which justifies permitting unpaid donation while banning paid donation. Hopefully I have convinced you of the same, and persuaded you that any opponent to the selling of human organs solely on account of autonomy should equally advocate a prohibition on unpaid donation or give up their opposition to a regulated market. Scheper-Hughes advocates for the first position; opposing paid as well an unpaid donation. She concludes that living organ donation should always be a last resort, and argues that we should instead focus our attention on expanding cadaveric donation[35]. I take the other position, the benefits of donation outweighs the concern we should have in regards to the autonomy of agents. I think we should both value and make use of paid and unpaid donations. Vendors should be regarded as noble as donors, as both their acts save a life. This benefit should remain untarnished by payment. We do after all pay all the nurses, doctors and staff that make any such donation possible. We should work to improve the conditions and circumstances both types of donations find themselves in.

There may, however, be relevant concepts of autonomy that I have failed to take into account. Furthermore the arguments against a market in human organs, as stated previously, are not restricted to autonomy based arguments. Arguments on the basis of harms, exploitation, and human dignity may come to find that there exists an essential difference between paid and unpaid donation, or they may not. We must also contend that the debate is surrounded by a lot of empirical uncertainty, and we may not be able to fully settle the debate until we have more stable empirical grounds to stand on.

This essay does not then fully answer the debate regarding the permissibility of a market in human organs, but I hope I have convinced you of how arguments that appeal to the autonomy of agents are misguided, and should be abandoned if a difference in treatment between paid and unpaid donation is to be preserved.

[35] Scheper-Hughes, N. op. cit. note 11.

## References


Anderson, S. (Summer 2021 Edition) "Coercion", *The Stanford Encyclopedia of Philosophy.* Edward N. Zalta (ed.) https://plato.stanford.edu/archives/sum2021/entries/coercion/

Baumeister, R.F., Brewer, L.E., Tice, D.M., & Twenge, J.M. (2007) The need to belong: Understanding the interpersonal and inner effects of social exclusion. *Social and Personality Psychology Compass*, 1, 506–520.

Cohen, L. (1999). Where it hurts: Indian material for an ethics of organ transplantation. Daedalus. 128(4), 135-65.

Christman, J. (1991). Autonomy and Personal History. Canadian Journal of Philosophy. 21(1), 1-24

Erin CA, Harris J. (1994) A monopsonistic market—or how to buy and sell human organs, tissues and cells ethically. In: Robinson I, ed. Life and death under high technology medicine. (p. 134–53) Manchester University Press

Frankfurt, H.G. (1971). Freedom of the Will and the Concept of a Person. The Journal of Philosophy. 68(1), 5-20

Goyal M, Mehta RL, Schneiderman LJ, et al. (2002) Economic and health consequences of selling a kidney in india. JAMA. 288(13), 1589-93

Halpern, S. D. et al. (2010). Regulated Payments for Living Kidney Donation: An Empirical Assessment of the Ethical Concerns. Annals of Internal Medicine, 152(6), 358-365. doi:10.7326/0003-4819-152-6-201003160-00005.

Hughes, P. M. (2009). Constraint, Consent, and Well-Being in Human Kidney Sales. The Journal of Medicine and Philosophy, 34, 606-631. doi:10.1093/jmp/jhp049

Kerstein, S. J. (2009). Autonomy, Moral Constraints, and Markets in Kidneys. Journal of Medicine and Philosophy, 34, 573-585. doi:10.1093/jmp/jhp046

Koplin J. (2014). Assessing the Likely Harms to Kidney Vendors in Regulated Organ Markets. The American Journal of Bioethics, 14(10), 7-18. doi:10.1080/15265161.2014.947041

Koplin, J (2018). Beyond Fair Benefits: Reconsidering Exploitation Arguments Against Organ Markets. Health Care Analysis. 26, 33-47

MacDonald, G., Leary, M.R. (2005) Why does social exclusion hurt? The relationship between social and physical pain. *Psychological Bulletin*, 131, 202–223.

Malmqvist, E. (2014). Are Bans on Kidney Sales Unjustifiably Paternalistic?. Bioethics, 28(3),

110-118. doi:10.1111/j.1467-8519.2012.01984.x

Monroe, R. (2017, 24 April). #Vanlife, the Bohemian Social-Media Movement. The New Yorker. https://www.newyorker.com/magazine/2017/04/24/vanlife-the-bohemian-social-media-movement

Olsaretti, S. (1998). Freedom, Force and Choice: Against the Rights-Based Definition of Voluntariness. The Journal of Political Philosophy, 6(1), 53-78.

Organ Procurement and Transplant network. (1988-2022). National Data. Living Donor Transplants By Donor Relation https://optn.transplant.hrsa.gov/data/view-data-reports/national-data/#

Scheper-Hughes, N. (2007). Tyranny of the Gift: Sacrificial Violence in Living Donor Transplants. American Journal of Transplantation, 7, 507-511. doi:10.1111/j.1600-6143.2006.01679.x

Semrau, L. (2015). The best argument against kidney sales fails. Journal of Medical Ethics, 41(6), 443-46

Shimazono, Y. (2007). The state of the international organ trade: A provisional picture based on integration of available information. Bulletin of the World Health Organization. 85, 955-962

Spriggs, M. Savulescu, J (2002). “Saviour siblings”. Journal of Medical Ethics. 28, 289

Thiel, G. T., Nolte, C. & Tsinalis (2005). Gender Imbalance in Living Kidney Donation in Switzerland. Transplant Proc., 37(2), 592-594. doi:10.1016/j.transproceed.2004.12.279

Tinson, A. (2020). Living in poverty was bad for your health long before COVID-19. The Health Foundation. https://www.health.org.uk/publications/long-reads/living-in-poverty-was-bad-for-your-health-long-before-COVID-19

Transplantation Society, International Society of Nephrology. (2008). The Istanbul Declaration. https://www.declarationofistanbul.org/the-declaration

Wilkinson, M. & Moore, A. (1997). Inducement in Research, 11(5), 373-389. doi:10.1111/1467-8519.00078

World Health Assembly. (2010). Human organ and tissue transplantation.

https://apps.who.int/iris/bitstream/handle/10665/3096/A63_R22-en.pdf?sequence=1&isAllowed=y

Wright, L., Faith, K., Richardson, R., Grant, D., & Joint Centre for Bioethics, University of Toronto, Toronto, Ont (2004). Ethical guidelines for the evaluation of living organ donors. *Canadian journal of surgery. Journal canadien de chirurgie*, *47*(6), 408–413.