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MY BODY, MY WARE-HOUSE?

Wehe! Ewig undurchsichtig
Sind die ewigen Gesetze
Der menschlichen Wirtschaft!
Ohne Warnung
Öffnet sich der Vulkan und verwüstet die Gegend!
Ohne Einladung
Erhebt sich aus den wüsten Meeren das einträgliche
Eiland!
Niemand benachrichtigt, niemand im Bilde!
Aber den Letzten
Beißen die Hunde!

(B. Brecht, *Die heilige Johanna der Schlachthöfe*)

Selling non-regeneratable parts of one's body seems to be ethically unacceptable to most people. And buying them from people who are forced to offer (non-regeneratable) parts of their bodies due to poverty seems to be ethically unacceptable, too. Although this ethical intuition is widespread we can see that in Western societies the claim to legalise selling organs for transplantation or offering financial incentives to motivate people becoming organ 'donors' is stated more and more frequently.¹

It is not difficult to find the reason for this: Transplantable organs are rare and due to medical and scientific progress more and more patients become possible receiver of organs. The shortage of transplantable organs is becoming more dramatic even since in at least some countries less and less people are willing to become organ donors after death. In spite of their willingness to accept organ transplantation if medically necessary for themselves many people hesitate to consent to become organ donors after their death. Besides that restrictive law regulating under which conditions organs

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¹ Although 'donation' has some connotations which seem to be incompatible with financial incentives or commercial interests I will use the term here in a neutral way as placing one's organs at someone's disposal.

can be taken after death lessen the number of transplantable organs since many relatives who are asked to consent to organ donation after their relative has died, refuse to do so. Structural problems in cooperation between those hospitals which have to ask for organ donation on the one hand and those who are transplanting organs on the other hand additionally lessen the engagement to inform patients and relatives and to take the chance to get transplantable organs after death of patients.

Due to this shortage 'death on the waiting list' is a sad but not a rare phenomenon in our societies since in many cases no therapeutic alternatives are at hand to help patients in need of a new organ. Therefore it comes as no surprise that measures and instruments are put forth to overcome this shortage. The main strategies discussed in this context are:

- expanding organ donation from living donors;
- developing artificial organs;
- stem-cell based cultivation of organs;
- transplantation of non-human organs (xenotransplantation);
- commercialisation of organ transplantation.

The prospects for developing artificial organs, organs taken from genetically manipulated animals or organs developed out of human stem-cells seem to be dim at least for the next decades. Therefore these options cannot be regarded as real options for reducing the shortage of transplantable organs in the foreseeable future. For sure preventive measures can be thought of (avoiding risks, changing life style etc.), but this will not rule out that people will be in need of organ transplantation.

Thus the main options that seem to be promising are improving organ donation after death and expanding organ donation from living donors. And one of the means to reach such an improvement both in case of organ donation after death and organ donation from living donors seems to be to allow for financial incentives and commercially regulated system of organ transplantation.

Due to these facts the discussion concerning liberating organ donation from living donors and legalising financial incentives for organ donation (from dead or living donors alike) has a point. In the case of living donors it is asked why we should forbid an autonomous person who gives his informed consent to become a living donor out of ethical reasons (not medical ones).² With respect to selling organs³ it is asked why we should

² I will restrict myself to ethical aspects, ignoring legal consequences of my arguments throughout.

³ In this paper I will take selling a kidney as the paradigm case. Since I try to make visible the main lines of the ethical debate this strategy is acceptable. A more detailed assessment of the ethical aspects of financial incentives in transplantation medicine will have to consider

forbid an autonomous person who rationally and autonomously wants to sell a part of his body to do so if no interests of a 'third party' are frustrated. In both cases our restrictive policy is criticised as unjustified ethical and legal paternalism. Starting from shared intuitions we now have reached a stage of debate and – probably – policy in the near future which can be characterised by a shift of the burden of proof. Now those who want to defend restrictive rules for living donorship or for banning financial incentives have to argue why the options under consideration are not acceptable from an ethical point of view.

Besides these common features of the debates concerning living donors and financial incentives in organ donation there are some features each specific to the two cases mentioned. Since I am interested in the latter topic here only I will not deal with special problems concerning organ donation from living donors. Since my main intention is to deliver arguments against legalising selling organs I will accept the shift of burden of proof to put defenders of financial incentives in a strong position. As we will see, I will make their case even stronger by accepting that certain kinds of ethical arguments concerning the commercialisation of organ donation cannot be established at all (part 2 and 3). Before I can do this some conceptual distinctions have to be introduced (part 1). Finally I will draw some sketchy and tentative conclusions which are intended to argue against the commercialisation of organ donation based on balancing intrinsic and extrinsic aspects (part 4). But the main focus of this paper lies on analysing the structure of the debate, not on an overall and detailed assessment, i.e. a fine-grained account. Therefore my paper should be taken as a necessary step to clarify the debate in order to make visible the different levels of argument and the burdens of proof which have to be taken into account here. Since I am convinced that a fruitful debate cannot be established if we use categorical arguments working as discussion-stoppers only, my main interest will be in this kind of arguments (intrinsic or extrinsic arguments will not be dealt with in detail).

1. Three Kinds of Ethical Arguments

From a meta-ethical point of view we can roughly distinguish between three kinds of arguments if we take a look at the intended strength of validity. These three kinds of ethical⁴ arguments are:

also selling parts of organs (e.g. lungs or liver) and selling regeneratable parts of the body (like blood, marrow or tissue). As will come out in the following it might be that balancing the different ethically relevant aspects will force us to give different answers in particular (kinds of) cases. But in this paper I will not try to develop such a fine-grained account.

⁴ Since I will consider ethical arguments in the following only I will omit this qualification from now on.

- categorical arguments;
- intrinsic arguments;
- extrinsic arguments.

1.1. Categorical Arguments

Categorical arguments are such that purport to show that a type of action *A* is obligatory in the ethical sense.⁵ A categorical argument does not rely on consequences of a particular action to reach its evaluative conclusion but tries to show that the ethical quality of actions of type *A* can be determined by the intrinsic nature of actions of type *A*. Furthermore categorical arguments do not allow balancing: If it is claimed that actions of type *A* are categorically right (or wrong), no such action *a* may be balanced against anything else of ethical worth. In other words: Categorical arguments do not allow for all-things-considered judgements.

If we allow that *non-A*, i.e. omitting *A*, is counted as a type of Action itself, we can say that a is *categorical pro argument* (CPA for short) if it claims that actions of type *A* are obligatory in the ethical sense, that is, that omitting *A* is ethically wrong in every case. Accordingly, a categorical argument is a *categorical pro argument* (CPA for short) if it claims that actions of type *non-A* are obligatory in the ethical sense, i.e. that doing *a* is ethically wrong in every case.

1.2. Intrinsic Arguments

Intrinsic arguments rely only on intrinsic features of persons, their actions (including omissions) and the situation under consideration (this marks the difference between intrinsic and extrinsic arguments). Furthermore they are intended to deliver prima facie reasons for ethical evaluation and therefore are open to balancing against other ethically relevant aspects of the situation (this marks the difference between categorical and intrinsic arguments). These aspects which are taken into account in forming an all-things-considered-judgment include intrinsic and extrinsic aspects.⁶ In principle the intrinsic features articulated in intrinsic arguments are open to be weighed against extrinsic features referred to in extrinsic arguments. Therefore an all-things-

⁵ I take intentions, formed by the agent, to be a subspecies of actions so that I do not have to distinguish further between different forms of categorical arguments (differing in what is taken to be the object of ethical assessment).

⁶ 'All things considered' means 'all things ethically relevant here considered'; I will ignore the meta-ethical challenge of particularism lurking at this point in the following.

-considered judgement cannot have categorical status (in the sense defined in 1.1), although it might be the case that it is universally valid (on a contingent basis). Intrinsic arguments can be pro- and contra-arguments, needless to say. But it is important to notice that at least some of those aspects emphasised in categorical arguments can be used in intrinsic arguments, too (only the intended strength of the argument is different). In contrast to this the aspects referred to in extrinsic arguments cannot be used in both categorical and intrinsic arguments.

1.3. Extrinsic Arguments

Extrinsic arguments rely on extrinsic features of the situation under consideration only. The most important extrinsic features can be divided into two groups: The first group consists of third-party-interests (that is e.g. interests of persons not directly involved in the situation as agents, interests of persons not directly affected by the actions under consideration, or interests of the society as such).⁷ The second group of external features I have in mind are causal consequences which are not part of the situation under consideration (this means that these consequences will happen after the situation is over).⁸ Many arguments in bioethical debates are framed in this way referring to future consequences as relevant aspects for evaluating a present action. Although mainly used as contra-arguments *de facto* extrinsic arguments of the second kind can be used as pro-arguments, too (referring to ethically positive consequences of an action, for example). As intrinsic arguments, too, they refer to ethically relevant aspects which can be weighed against other (intrinsic and extrinsic) features taken to be ethically relevant in evaluating a situation.

1.4. Relations among These Three Kinds of Arguments

Before I start to discuss categorical arguments for and against the ethical acceptability of financial incentives in organ donation two remarks concerning the distinction made above need to be made.

⁷ This is intended to leave open the question, whether the phrase 'interests of the society as such' can be reduced to interests of individual persons or not.

⁸ This second kind of extrinsic arguments consists of so-called slippery-slope arguments. Since I think that only those slippery-slope arguments which rely on causal consequences are meaningful I have ignored other variants (by stipulation); [cf. Guckes; Walton]. Slippery-slope arguments in this sense refer to empirical facts or prognosis and therefore essentially involve non-ethical arguments, too.

1. The difference between categorical arguments on the one hand and intrinsic and extrinsic arguments on the other hand consists in the intended strength of the argument. Ethical aspects referred to in categorical arguments are meant not to be weighed against other ethically relevant aspects. The problem these categorical arguments pose are twofold: Firstly it is difficult to justify categorical arguments in philosophical ethics without relying on premises which are not universally accepted in a secular and pluralistic society (such as our society). Secondly if there is more than one categorically relevant argument in relation to a given situation an insoluble ethical dilemma might arise. Since balancing is not allowed per definition here, no further rational solution is possible.

The consequence of this is that in case you have established a categorical argument successfully no intrinsic or extrinsic argument can do any justificatory job any more (for sure, it can have rhetorical effects, nevertheless): Intrinsic and extrinsic arguments are pre-empted with regard to justification by categorical arguments.

2. The distinction between intrinsic and extrinsic arguments is not sharp but fragile as it is always possible to describe a given situation in the light of causal consequences (e.g. to refer to an action as the action which will cause the fourth world war in some years). Besides that one can always define the situation in a way that some aspects which have been taken as intrinsic before afterwards have to be taken as extrinsic (and vice versa). With respect to the first problem (well known in action theory and theory of causal explanation) one has to be careful in considering the description chosen, and regarding the second problem it is important to see whether arguments refer to the same situation, or not. If it is determined what the situation under consideration is taken to be, the line between intrinsic and extrinsic features is determined as well.

2. Commercialisation of Organ Donation Categorical Arguments?

Imagining to sell one's own organs (or even to be coerced somehow to do so) awakens deeply anchored ethical (and aesthetical) intuitions. The same can be said regarding the imagination that rich people are allowed to buy organs for themselves offered by very poor and needy persons. As usual in bioethical cases of conflict reality is more complex than our first intuitive stance suggests. Saying this does not come down to claim that these ethical intuitions are not well justified (or justifiable at least), or to claim (even stronger) that ethical intuition should not play a justificatory role in ethics.⁹ But it suggests that we are in need of a second look and are required to judge in a more differentiated way.

⁹ Cf. [Vieth, Quante, p. 203–204] for more on this.

2.1. Cases

A closer look at the ethical literature regarding the question of commercialisation of organ donation reveals that both camps – the pros and cons of commercialisation – have their own favourite cases in mind. Let me briefly characterise two cases which are used to show that commercialisation is ethically wrong in such a way that the basic features become visible. After that I will characterise two cases which are used to show the opposite in the same way.

The first (fictional) case: Ann is a big fan of expensive sports cars. Since she is interested in sports cars only, Ann has nearly made no social contacts outside her peer group (other sportscar fanatics), she has no family and no friends. Unfortunately Ann, who is in good health, is not rich enough to be able to buy her most beloved car (insert your favourite sports car!). Having taken notice of a campaign to get more transplantable organs via financial incentives Ann decides to sell one of her kidneys to be able to buy the car which she believes to make her life worth living.

The second (fictional) case: Indira, living somewhere in one of the big cities down in the third world has no chance to feed her family (including several children) after her husband has been killed by a bomb while he was selling vegetables on the market place. Indira no other option than to sell one of her kidneys at a price that her family can stay alive at least for ten years without financial problems.

These are the cases made against commercialisation. The opposite party tells us very different stories.

Look at the third (fictional) case: A wealthy, well informed, healthy person named George who avoids unhealthy life-style is living alone (without family and without social commitments of any 'deeper' sort). George decides to sell by auction (via e Bay probably) one of his kidneys after having thought about this for a long time. The money he will get for his kidney shall be given to a foundation devoted to medical care for needy people in underdeveloped countries. Since George is interested to help now he wants to become a living donor.

The fourth (fictional) case: Wilma, a secretary having financial resources of average kind lives alone with her child that is severely mentally and physically handicapped. Wilma now wants to commit herself to donate those transplantable parts of her body after death if she gets a certain amount of money for them. By contract this money will be paid after her death and will be used to guarantee lifelong care for her handicapped child.

2.2. The Lesson to Be Learned

I admit that these four cases are slightly exaggerated, but they illustrate a general trend. Above all they are typical examples of a widespread strategy in bioethics (and especially in public debates concerning bioethical problems).

Arguments *against* commercialisation often are illustrated (or justified) by cases most defenders of commercialisation would not find ethically acceptable, either. This is so at least for all those defenders of financial incentives who do not argue for a completely free market without any restrictions – and these are, as far as I can see, all positions in the debate which seriously have to be taken into account. After having made their point using such a case normally an overall conclusion will be drawn: Either it is purported that the case is sufficient to establish a CCA. Or it is argued that the special case can be generalised without losing its ethical significance. Both conclusions are not valid and can be denied even if one agrees with the evaluation of the single case.

Arguments *against banning* commercialisation often rely on cases in which selling organs is combined with altruistic motives. This helps to integrate some central intuitions which are important for all those arguing against commercialisation. In such a way we find a transfer of those features which make organ donation ethically praiseworthy onto the act of selling one's own organ.

On the one hand this shows that even defenders of commercialisation acknowledge the ethical significance of altruism in this context (at least as a *de facto* operative feature in our daily ethical experience). But one has to agree that at this point in the debate they are right in claiming that cases like these undermine categorical arguments against commercialisation (at least *prima facie*). These cases show that our daily intuitions do not cover these strong ethical claims made in CCA. On the other hand defenders of commercialisation tend to overstate their claims by drawing some categorical conclusions themselves. Since categorical arguments never can be justified by illustration of single cases neither camp can defend their categorical arguments this way.

3. Categorical Arguments

Since cases cannot establish categorical arguments we have to scrutinise these arguments directly now. In this section I will discuss two CCA and two CPA which I think are the most prominent arguments developed in the literature so far. Let us begin with categorical arguments against commercialisation of organ donation.

3.1. CCA

As far as I can see there are two interrelated paradigmatic kinds of CCA. The *first* CCA basically tries to show that selling parts of one's own body is incompatible with human dignity as such. Usually this argument is justified by reference to the concept of duties towards oneself and supported by reference to Kant's overall ethical theory. Human dignity in this line of thought is taken to be an 'absolute' value in the sense that it is not allowed to withdraw from it. Even S himself, a bearer of human dignity, is not allowed to withdraw from his own dignity (whatever the reasons for withdrawing or the consequences of not withdrawing may be). Furthermore human dignity is 'objective' in the sense that the content of human dignity is not constituted by the interests and values of S himself. For sure extrinsic arguments (third-party interests or causal consequences) are irrelevant in CCA. Arguing this way we are addressed to the one who wants to sell his organ (whatever his motives may be). Defenders of this version of CCA hold that this type of action is incompatible with human dignity and therefore ethically unacceptable.

The main problem with this variant of CCA is that such an absolute and objective notion of human dignity is hardly to be justified without relying on premises which are not accepted by everyone in a secular and pluralistic society.¹⁰ This is even more so if the concept of human dignity is not taken to be a purely formal concept but is taken to have material implications. Besides this overall problem that springs from the intended strength of the ethical claim, a further question that is also relevant in the context of assessing intrinsic arguments has to be posed: What is the special feature rendering selling parts of one's own body ethically unacceptable while other forms of treating oneself as a mere means are not taken to be incompatible with human dignity (think of dying in a 'just' war giving one's life to defend one's country against a terrible aggressor; it is hard to see where the difference between these two cases can be found if we have to ignore further motives, interests or consequences of the action). This problem is an especially hard one for societies such as ours since exchange of goods and selling one's labour(power) are not only taken as ethically acceptable but even regarded as manifestations of one of the most important freedoms human beings can and want to exercise.

The *second* CCA tries to show that in every case in which S buys an organ from S* the autonomy of S* is hurt since S* is treated as a mere means by S only. In this argument we are addressed to the one who buys or wants to buy an organ and is making such an offer. The intention of

¹⁰ Cf. [Quante 4, pp. 45–68] for a detailed discussion of this.

S implies so the CCA runs necessarily that S* is treated as a mere means. Since one of the main features of human dignity is taken to be that treating a bearer of human dignity as a mere means is incompatible with human dignity the conclusion is that buying organs (or making the offer to buy one) are types of action incompatible with human dignity.

But even if we admit that there might be situations in which S is buying an organ (or making such an offer towards S*) implies treating S* as a mere means only, it is far from plausible to assume that this must always be the case. As described in the case of George (our third case) selling an organ can be offered by S* without having another person S as the trading partner. In such a situation no offer is made (except in the weak sense that there exists an institution willing to accept the money George will have got after the deal) at all. Therefore the claim that S (!) has been treated as a mere instrument only cannot be made plausible.¹¹ For sure one might want to reply that fellows like George are rather seldom in our world. This I admit at once without hesitation. But to invalidate a *categorical* argument of this kind it is sufficient to refer to such a case which is not impossible (it need not even be an actual case because of the intended strength of the CCA). There may be cases of trading organs which plausibly can be characterised as cases of total instrumentalisation. But this cannot be generalised such that all actions of the type ‘buying organs (or making such an offer)’ are covered.

3.2. CPA

In current discussion fundamental ethical intuitions seem to support CCA so that mainly arguments of this kind dominate the public debate. Due to this overall dialectical situation defenders of the idea that commercialisation of organ donation is an ethically acceptable means to overcome the shortage of (some kinds of) transplantable organs have two options.¹² On the one hand they can simply try to refute CCAs and argue that our overall situation is this: In some kinds of situation offering, selling and buying organs is an ethically acceptable option. This line of argument can be called the *weak* defence of commercialisation of organ donation since only intrinsic or extrinsic arguments are used and special kinds of cases or even single cases are evaluated. On the other hand defenders of the idea of

¹¹ Quite the contrary: One might argue that not allowing S to sell one of his kidneys (at least in some situations) is a case of treating him as a mere means since his autonomy is sacrificed for human dignity (taken as an absolute value).

¹² As far as I can see defenders of the idea of commercialisation sometimes are not clear about this and the intended strength of their arguments.

commercialisation of organ donation can take the hard line trying to defend CPAs by purporting to show that penalizing selling or buying organs generally is ethically unacceptable.¹³ This *strong* defence must rely on CPAs and, as far as I can see, two types of this kind of argument are operative in the debate.

For sure, such CPAs cannot be established in every case of buying, offering or selling organs (to repeat: nobody who seriously makes the case for commercialisation argues for a totally free market). There are at least two necessary pre-conditions for this: firstly, the selling party does so autonomously; and, secondly, no basic rights of a third-party are interfered with.¹⁴ We can integrate this by defining the type of action under consideration in the appropriate way; presupposing that this has been done successfully we can stipulate that the CPAs in question refer to this more fine-grained defined type of action.

After this has been done a defender of such a CPA claims that it is ethically unacceptable to penalise buying, offering or selling organs. The *first* CPA of this kind is based on the idea that the body has to be regarded as the person's property so that parts of it can be sold (at least in principle). The *second* CPA of this kind is based on the principle that an autonomous decision of a person has to be respected if no basic rights of a third party are hurt. Overruling such an autonomous decision would be a case of (legal) paternalism, and paternalism is a type of action which is categorically wrong from an ethical point of view.

If it were possible to establish these CPAs a further assessment of intrinsic or extrinsic arguments would be pre-empted for the type of action dealt with in these arguments.¹⁵ But I am sceptical that a strong defence of commercialisation of organ donation can be successful. If we scrutinise the *first* CPA we can ask at once whether it is plausible to take the relation holding between a person and its body as a property relation. The use of 'my' can have more meanings than the one indicating property. For example

¹³ Putting things this way leaves open two options. Firstly one might argue that buying and selling organs is ethically acceptable so that penalising it cannot be ethically acceptable. Secondly one might defend the position that buying and selling organs is ethically (very) problematic but that penalising would be ethically even more problematic. In the latter case the ethical and the legal assessment of commercialisation of organ donation diverge. Since I restrict myself to (some aspects of) the ethical debate I will ignore this distinction in the following.

¹⁴ For sure the general philosophical problems of defining 'basic' rights on the one hand and identifying sufficient conditions for autonomous decisions on the other hand are lurking here. But since these problems are not topic-specific I will ignore questions being raised by them here.

¹⁵ This leaves open the possibility that in other situations intrinsic or extrinsic features might be decisive.

it can be expressed such that I take my body to be a part of mine. This case might even be strengthened if I claim that I am identical with my body (e.g. if I hold a materialistic or an identity-theory in the philosophy of mind). Therefore the claim that a person is the owner of her body cannot be established by referring to our use of ‘my’ in this context alone. But every philosophical argument which tries to establish this interpretation will have to rely on further premises which are such that it is plausible to assume that they will not be contested in our society. Furthermore: even if we admit that ‘my’ in this context is the ‘my’ indicating property the CPA under consideration does not follow. The reason for this is that in some cases ownership can be restricted with respect to other ethically important values and principles. Thus ownership does not imply that the owner can decide totally arbitrary what to do with her property. Therefore, accepting that the relation between a person and her body is one of ownership is not sufficient to establish a CPA of the intended kind.¹⁶

So let us consider the *second* CPA now. Above all in the contexts of legal discussion concerning the question whether commercialisation of organ donation should be legalised a CPA can be found relying on the notion of legal paternalism. Although used rhetorically as an objection to CCAs or intrinsic arguments against commercialisation this CPA claims that banning commercialisation is a case of legal paternalism and *therefore* ethically and legally unacceptable. Based on the premise that legal paternalism is unacceptable as such this argument is meant to work (and often works successfully in debate) as a CPA.

But used this way the argument carries its point too far: The principle of respect for personal autonomy is, without doubt, one of the fundamental principles in contemporary ethical and political philosophy.¹⁷ Furthermore autonomy has to be regarded as one of the most fundamental values in our Western cultures which is not only a foundation stone of our political system but is an essential element of most persons’ values, too. But, nevertheless, autonomy is not the sole value of our society and respect for personal autonomy is not the only or always dominating principle in ethics and politics. Therefore the argument cannot work as a PCA against banning commercialisation of organ donation. The ‘truth’ in it is that it makes clear that banning buying, offering or selling organs is a form of legal paternalism. Making this claim shifts the burden of proof since defenders of intrinsic or extrinsic arguments against commercialisation now have to show which features of buying, offering or selling parts of one’s body are so seriously ethically unacceptable that they can overrule the paternalistic aspect of

¹⁶ Cf. [Heinrichs, p. 277–288; Wilkinson, chapter 7] for overview.

¹⁷ Cf. [Quante, chapter 5] for my account of personal autonomy.

banning commercialisation.¹⁸ Taken as an intrinsic argument justifying commercialisation in the case under consideration, based on a voluntary, well-informed and not coerced decision of the 'donor', it is an argument worth serious consideration. And as far as I can look inside the rhetoric of CPA this argument works in this way as an intrinsic argument de facto in ethical and legal contexts.¹⁹

4. The Wide and Open Field of Non-categorical Ethical Assessment

From a meta-ethical and ethical point of view it is difficult to establish categorical arguments in general. As far as I can see no such argument has been successfully defended in philosophical ethics by now. Either such arguments are subject to severe philosophical objections or they rely on premises which cannot be taken as universally accepted (or acceptable) in a secular and pluralistic society. Furthermore it is a difficult and by far not trivial step to come from such categorical arguments to concrete arguments which can be used to assess concrete problems or single cases.

In this paper I do not want to claim that categorical arguments cannot be defended in philosophical ethics or are not needed in such an account at all.²⁰ For my present purposes it is enough to claim that no such categorical argument dealing with commercialisation of organ donation has been introduced and defended successfully. If philosophical ethics does not want to claim that the question under consideration is no proper target of philosophical reflection at all but has to be handled by political decision alone intrinsic and extrinsic arguments will have to be used in defending or banning commercialisation

It is far beyond the scope of this paper to enter the wide and open field of ethical assessment which has to be taken into account if an all-things-considered judgment concerning commercialisation of organ donation is developed. First of all we would have to make many cases out of the one: We have to ask whether the case of living donors is significantly different from the case that organs are taken after death. Furthermore the evaluation of buying, offering or selling organs (and parts of organs) might be different from the evaluation of blood, marrow or tissue. Finally risk (of the seller) might make a difference (compare donation of parts of liver and donation of kidney) in ethical respect.²¹

¹⁸ For a more detailed treatment of the issue of paternalism see [Quante 1, chapter 8].

¹⁹ Cf. [Schroth, p. 203–234] as an example for this line of argument.

²⁰ But see [Quante 1, chapter 9] for such an argument.

²¹ Cf. [Ach, chapter 8] for detailed discussion.

Personally, I think that a kind of cumulative argument against commercialisation can be made plausible. The main aim of legalising buying, offering and selling organs is to have available more organs suitable for transplantation. In the cases in which a person offers and sells parts of her body after having decided autonomously this decision deserves respect. So far the argument for commercialisation can be established successfully.

But I think that there are two important arguments against legalising buying, offering or selling organs in general. The first is an intrinsic argument, the second an extrinsic one (relying on consequences likely to occur).

To begin with the intrinsic argument I want to claim that legalising commercialisation means to let the logic of the market infect the relation between a person and her body. This will cause serious changes both in inner perspective persons have on their own body and in outer perspective we have on the body of other persons. For sure in a society selling labour power is widely accepted there is some infection of this kind operative already. But as I see it legalising commercialisation would enforce this trend. We should be aware of the losses of value which are connected to this (I think of the values of bodily integrity or naturalness for example and all changes that will occur if something is put into the legal space). Even in the case of altruistic organ donation (primarily as a living donor) the use of one's own body as an instrument has to be compensated by the altruistic aspect of the action to make organ donation ethically acceptable. Without this the overall ethical basis of organ transplantation is severely weakened.²²

Furthermore, to bring the extrinsic argument into play also, these negative aspects of legalising organ donation should not be accepted if it is likely that the main target (getting more transplantable organs) will not be reached thereby. At least in Germany the willingness to become an organ donor decreases more and more. One of the main reasons for this is decreasing trust in modern medicine. I cannot see that commercialisation will help to regain trust (or that financial incentives are able to compensate this loss of trust). Sometimes the argument against commercialisation is mitigated by referring to the future prospects of xeno-transplantation, artificial organs or the results of stem-cell research. I do not think that we should back our 'No!' regarding commercialisation with this kind of hope since these options also cause deep ethical worries.²³ But there are, as far as I can see, some other options to get more organs transplantable for donation. First of all the rules for taking organs after death should be reconsidered; secondly structural deficits in cooperation between hospitals asking for organs and hospitals transplanting organs should be eliminated;

²² I have elaborated this line of thought in [Quante 5, p. 181–196].

²³ Cf. the contributions in [Quante, Vieth; Quante 2] for discussion of these cases.

thirdly a lot more has to be done in the development of suitable techniques of informing and asking relatives to consent to organ donation after the death of a relative [cf. Muthny, pp. 107–121]. And finally we should think about integrating these questions into the syllabus at school (among other bioethical topics, for sure). Doing this can increase people's consciousness that in societies such as our own the altruistic act of becoming an organ donor after one's death should become a matter of course.

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Czyżbym z mego ciała miał uczynić dom towarowy?

Artykuł stawia pytanie o dopuszczalność handlu organami do przeszczepu: chodzi zatem o propozycję, która choć może robić wrażenie etycznie niedopuszczalnej, jest pomimo to coraz częściej wysuwana jako temat dyskusji w społeczeństwach zachodnich. Podstawowym powodem jest oczywiście rozbieżność między liczbą dawców i biorców. Artykuł odnosi się do różnych możliwych sposobów rozwiązania tego problemu, uznając przy tym, że pomysł komercjalizacji

przeszczepów jest szczególnie prosty technicznie. Scharakteryzowane zostały trzy rodzaje argumentów etycznych w ogóle. Pierwszy z nich jest argumentem kategorycznym: podstawowe pojęcie, które określa ten rodzaj argumentu, to pojęcie obowiązku moralnego. Drugi rodzaj argumentu można określić jako immanentny; w tym przypadku bierze się pod uwagę tylko cechy własne osób znajdujących się w takiej sytuacji, w której konieczne jest podjęcie pewnej decyzji o charakterze etycznym, oraz charakterystyka samej tej sytuacji i najbardziej bezpośrednio konsekwencje proponowanego działania. Pozostaje jeszcze argument zewnętrzny, gdzie pod uwagę bierze się tylko szerszy kontekst pewnej sytuacji. Teza artykułu głosi, że tylko dwa ostatnie rodzaje argumentów mogą mieć zastosowanie w przypadku debaty o komercjalizacji przeszczepów organów. Udowadnia się, że nie może mieć zastosowania argument odwołujący się do pojęcia obowiązku moralnego, możliwe jest jedynie rozumowanie odwołujące się do wewnętrznych lub zewnętrznych uwarunkowań, w jakich podejmuje się decyzje w dyskutowanej sprawie. Ostatnia część artykułu zawiera wyliczenie najważniejszych argumentów typu drugiego i trzeciego, które są wysuwane przez przeciwników komercjalizacji handlu organami.