Why We Are Not Allowed to Sell That Which We Are Encouraged to Donate

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Introduction

It is a reality today that people die waiting in line for transplant organs. Something needs to be done to remedy this dire situation and alleviate the suffering. Broadly speaking, barring scientific progress that might make artificial organs and stem cell therapy viable alternatives, three options are available to us: increase voluntary donation, compel access to organs via government policy, or open up for a commercial market in organs.

It has proven hard to explain why so many of us are convinced that donation is the only morally permissible form of transaction when it comes to organs from the living. This is particularly surprising in light of the fact that we live in a liberal, capitalist society that has seen fit to not only commodify, but, indeed, also commercialize just about everything else. Naturally it would be a different matter altogether if organs were nontransferable, that come what may no human being could be allowed to part with his/her organs. But this is not so—quite the contrary, the citizens of the Western world are exposed to campaigns encouraging donations. It is quite difficult to come up with other examples of objects that we are encouraged to donate and at the same time morally forbidden to sell. Bearing in mind the current organ shortage, ethical questions relating to organ procurement are becoming increasingly pressing—what can we allow ourselves, and others, to do with our bodies?

In this paper I attempt to show that virtue ethics could provide an explanation of why it is morally permissible to donate but not to sell organs, which seems to correlate with our moral intuitions on this matter. The position defended here is that it is morally wrong to sell organs because this is something a virtuous person would not do. Given the choice between selling and donating an organ the virtuous agent would choose the latter, and this is why it is not permissible to sell one’s organs. I, first, however take a closer look at some standard arguments for and against the selling of organs. Then I move on to a discussion about whether virtue ethics can give us the necessary tools for explaining why we are not allowed to sell that which we are encouraged to donate. The purpose is to show that a strong case can be made that, given the choice, a virtuous person would donate rather than sell his or her organs.

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Some Common Arguments in Favor of Organ Commodification

A number of arguments in favor of allowing for a market, especially in kidneys, have surfaced in the increasingly heated debate surrounding transplant organs. Broadly speaking, such arguments can be split into two groups: consequence- and rights-based ones. It should be noted that very few people, however, go all the way and propose an unregulated global market for organ transplantation. Arguments are commonly put forward in defense of a limited market, one that is rigged such that the active participants can be protected against the most blatant forms of harmful exploitation. For example, one could imagine a scenario where both the buyer and the seller had to be part of the same healthcare system, where there would be only one procurement unit in the system, where the prices would be set and nonnegotiable, and where the queuing system for the recipients remained the same as today. Such a limitation is said to be especially reasonable from a consequentialistic standpoint, as it is assumed to have more favorable consequences than its unregulated counterpart. Whether such a system would, in fact, provide protection for the especially vulnerable is, of course, an empirical question. It is, however, doubtful if any of these arguments are convincing in the sense of being capable of giving an account of people’s moral intuitions.

Consequentialist arguments are often structured along the following lines: It is a fact that most people do not donate their organs, at least not to the extent that is required to make up for the organ shortage. It is said to follow that we ought to create a market for selling and buying organs because that would have the best consequences in the sense that fewer people would suffer, and die, in line for a transplant. The underlying assumption is that payment would result in more available organs. It is suggested that many people who are not prepared to part with their organs given the current legislation might well rethink their decision if they were paid. Evidently this is an empirical assumption, but it does not seem to be too far-fetched.

A standard critique is to draw a parallel with the case made for blood donation by Titmuss in his book *The Gift Relationship*. In that text, he argued that paying for blood would not increase the supply significantly, as those who had previously donated would be repulsed by the introduction of money in this transaction. The available empirical data do not suffice to determine whether this is true in the case of organ transplantation. However, it should be noted that donations are in this case—contrary to blood donation—essentially restricted to close relatives. It is a plausible hypothesis that the choice of giving one’s kidney to a close relative is less influenced by a parallel market than the act of donating one’s blood to an unknown recipient. Moreover Titmuss argued that such a financial compensation would attract the wrong kind of people, for example, drug addicts, and thus threaten the quality of the blood. The scientific progress made since the 1970s has made it possible to test for a much larger range of diseases, a development that disqualifies Titmuss’s concerns that commercialization would increase the spreading of infectious diseases.

The second broad category of arguments consists of rights-based ones. The underlying assumption is that we have a right to our own bodies such that we are also entitled to sell parts thereof that we can make do without. It is suggested that the ruling out of a market in organs is, in fact, a grave violation of people’s most fundamental rights. Briefly, the gist of the argument is the...
following: We do not live in a fair world, resources and opportunities are not evenly distributed, and, as a result, the vast majority of the world’s population lives in poverty. We should all do our best to lessen poverty and suffering and make the world a more equal place. This is not done, however, by denying them what might be their best option to improve their lives, which well could be to sell an organ. In the words of Janet Radcliffe-Richards et al., “feelings of repugnance among the rich and healthy, no matter how strongly felt, cannot justify removing the only hope of the destitute and dying” (p. 1950). To do so, it is said, is to violate their rights, rob them of their autonomy, and, to make matters even worse, will do nothing to alleviate the real problem. Julian Savulescu takes the argument one step further and calls a ban on organ selling “paternalism in its worst form” (p. 139). He advocates that people should be allowed to make this choice (on the condition that it is informed consent) if it provides them with the means to realize what they value in life.

Although the arguments outlined above might seem reasonable on one level (i.e., that people should not have to die queueing for an organ if there are alternatives), they fail to correlate with most people’s moral intuitions on this matter. It appears that we have strong intuitions, in the sense that they are stable and withstand the test of time, that the selling of organs is plain wrong and no reasonable consequence- or rights-based argument can make it more palatable. Naturally this could just mean that we are wrong. It is unclear what the difference, if indeed there is any, between moral intuition and emotional aversion actually consists of and moreover if people’s emotional aversion should carry moral weight. It is far from obvious that the fact that we (the rich and healthy, presumably) are repulsed by something truly means that it is also morally reprehensible. Perhaps this reveals an inconsistency in our views on the relationship to one’s own body. However, given that the purpose of normative ethics is to help us to bring some order to and explain our stable moral intuitions, the above-mentioned theories do not seem to be adequate tools for doing just that. Few of us sincerely feel that creating a market for transplant organs would make the world a better place from a moral point of view, even if the consequences were favorable and important rights would be protected.

Some Common Arguments against Organ Commodification

Before moving on to the virtue ethics analysis, three of the most frequently voiced arguments against selling organs are explored.

First, it is said that commodification of organs is wrong because it implies that we use people as means to an end rather than allow for them to be ends in themselves. Such arguments draw on Kantian ideas of not using people as means to an end and that selling even the smallest part of ourselves would open the door for slavery. Or in Kant’s own words, “a man who sells himself makes himself a thing and as he has jettisoned his person it is open to deal with him as he pleases” (p. 124). Thus Kant effectively states that any form of selling is degrading because it implies that a human being is property, a commodity like any other. It is also feared that such a practice might reduce human dignity by introducing a new way of thinking both about others and ourselves—that some humans would come to serve as toolboxes for others.
The second argument against commodification is that it is presumed to lead to increased exploitation of the poor and already vulnerable members of society. The main concern is that the seller would be an individual at the bottom of society, often a resident of the Third World, and the buyers rich Westerners who had taken ill due to their affluent lifestyle. In short, it would be exploitative. It appears valid to argue that whenever the First World deals with people who do not have their basic needs fulfilled, exploitation is just around the corner. As pointed out above, however, one could naturally imagine a regulated, presumably less exploitative, version of the market.

The third argument is that people might be encouraged to take risks they would not otherwise take just to get some money. On the other hand, we allow people to take huge risks (from which they might otherwise have refrained) in exchange for money in other areas such as boxing and Formula 1 driving. Further to the point, we praise those who take the risk to donate without compensation; suddenly the act of risk taking seems not only permissible but in fact admirable.11

It should now be clear that the current debate consists of an array of arguments, few of which actually manage to shed light on the selling versus donation dilemma. This state of affairs is quite problematic—although most of us agree that commodification should be kept at the gates, an exhaustive and coherent account of why this is the right standpoint is lacking. I believe that virtue ethics, by pointing to the fact that a virtuous person would donate rather than sell, can help in creating an ethical position strong enough to explain why organ selling should be ruled out.

Virtue Ethics

Just like other ethical theories, virtue ethics can be accounted for in various ways. In this section, an outline will be given of those components of virtue ethics that I deem essential to the position I wish to defend in this paper. Although virtue ethics is primarily occupied with what kind of person one ought to be, that is not to say that it is incapable of competing with, for example, utilitarianism as a theory of the right action. It is indeed central to the argument put forward here that virtue ethics can be action guiding. Rather than saying that virtue ethics is unable to live up to the demands of a comprehensive ethical doctrine and therefore needs to be supplemented by another theory of the right and wrong action, I believe that a strong case can be made that virtue ethics can be an action-guiding, stand-alone theory.12 It seems reasonable to assume that we can have an intuitive understanding of how a virtuous person would act when facing a problem. At any rate the appeal “what a certain person would do” is used, and appears to work reasonably well, in many other situations, for example, in healthcare and in the courts. In addition it is not clear that virtue ethics needs to claim that there is but one true account of what a virtuous person would do. Admittedly, it is not unusual to combine virtue ethics and healthcare ethics. In fact there is a relatively long-standing tradition of care theory, a philosophical approach often associated with feminist ethical theories.13

Most mainstream moral theories, such as utilitarianism, Kantian ethics, and contract theories, occupy themselves with the issues of rightness and obligation. Virtue theory, on the other hand, approaches ethics by asking “what traits
of character make one a good person?” Traits or qualities one is born with do not qualify as virtues. Rather, it has to be something that one can induce oneself to achieve or learn through proper upbringing and education. Note, however, that this does not imply a total disregard for the actual action as such, nor for its consequences. We can well imagine cases where the virtuous agent would, in fact, be highly concerned with the consequences and then, naturally, so should we be. A key claim made by virtue ethicists is that we ought to do what a (fully informed) virtuous person would have done. So how can we meet this requirement and how do we determine whether virtuous persons would donate rather than sell their organs? Broadly speaking, there are two answers to this question, the classic Aristotelian approach and a more modern one. Aristotle claimed that the virtuous character traits are those we need to live humanly flourishing/fulfilled lives. He argued that it is only when we live virtuously that our rational capacity can guide our lives. Character traits have to be stable—that is, the disposition has to be firm and unchanging—and should, in this context, be understood as something that is manifested in habitual action. However, habitual should not be interpreted as “automatic.” Describing an action as habitual does not necessarily mean that it is also effortless or spontaneous, although it could well be; in fact, most decisions would be reached through deliberation. In short, moral virtues are those virtues that are good for everyone to have. The more modern approach, partly seeking to avoid references to human nature, claims that the virtues come from the commonsense views about which character traits we typically find admirable, traits manifested by people we look up to. These are the kind of people we ought to model ourselves on when seeking to act virtuously. It seems plausible to argue that it is more admirable to donate than to sell one’s organs—we look up to those who take personal risks not for the sake of economic compensation but simply because they “see” that helping their fellow man is a fine and worthwhile thing to do. Presumably this could be the practical expression of a number of virtues such as unselfishness, generosity, kindness, beneficence, and so forth.

There is quite a bit of disagreement with regards to what the virtues are and their relative order. Central virtues for the ancient thinkers were, for example, courage, wisdom, generosity, and truthfulness. The list could, of course, be extended to include many other qualities such as moderation, justice, benevolence, loyalty, tolerance, patience, and so forth. Would it then be fruitful to talk of the good person? Is there a single set of virtues that are desirable for, or indeed essential to, everyone? The Aristotelian reply is that there is a catalog of virtues that would be required by all people in all walks of life because of basic facts about our human condition impossible to mitigate by social convention. It should be noted that Aristotle was less concerned with connecting the virtues to the solutions to normative problems. He proposed that the virtues, rather, would help us to find the right path, the golden mean, in life and perhaps assist us in staying on it. Equipped with the combination of practical wisdom and the virtues, we would “see” what should be done and then desire to act accordingly. It is quite possible that there are no fully virtuous persons in existence, but the point is that we could imagine what such a person would be like and thus aspire toward that ideal. Human flourishing should, however, not be understood as having instrumental value—we should all aim to flourish simply because that is the best thing to do. The fulfilled life is the best life any

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human being can have, and as we act virtuously, displaying the excellences, we are living that life. Or in the words of Crisp and Slote, “the virtue ethicist, however, will recommend acting out of a commitment to a value of, say charity, for its own sake” (p. 18).16

The Transplant Issue

So how does one tell if it is more virtuous to donate than to sell one’s organs? From a virtue ethics perspective, there are two answers to that question: It is either that which will help us flourish as human beings or what is admirable to do.

Let us first briefly recapitulate what Aristotle had to say about human flourishing and what is required of us to lead a flourishing/fulfilled life. We recall that a virtue is here to be understood as the golden mean, an intermediate, between two vices. Acting virtuously does not require us to maximize the good; we can do this without bringing about the best consequences. What should be aimed for is instead excellence; rather than seeking to have the best friendship we can have we should strive to have excellent friendships. This could be understood in relation to the golden mean—that we are under no obligation to maximize but, rather, to strike a balance in life. In the words of Christine Swanton, “we do not, in Aristotle, understand virtues via an account of flourishing—we understand flourishing via an account of the virtues” (pp. 8–9).17 According to Aristotle, to flourish is a desirable state for any human being because it is only then we can lead fully human lives realizing our full capacities. The virtues, or excellences, are said to be universal in the sense that they are moral qualities that are good for everyone to have in all societies and walks of life.

Let us construct an example to examine whether a case can be made that organ donation is more likely to promote human flourishing. We imagine two men each wanting to make a kidney available for transplantation. A wants to donate and B wants to sell. Let us now investigate whether A, by wanting to donate, is successful in fulfilling several of the virtues as listed by Aristotle.

By being courageous, we bravely sacrifice ourselves and jeopardize our own well-being and health; we choose to perform an act that we know involves some risk. “The courageous person is the one who stands firm and keeps his head in the midst of danger.”18 She/he is neither a coward nor does she/he take foolish risks, that is, such a person has the right attitude to personal safety. This appears to hold true for both A and B—regardless of why they are contemplating giving up their organs, the two of them run the same medical risks. However, one of the strengths of virtue ethics is that it provides an account of moral motivation. The theory recognizes that we can only get a satisfactory account of moral life when we look to the motives of an action. It seems reasonable to suggest that a contributing motive for selling a kidney, in a situation where one could have chosen to donate, would be personal gain (monetary or otherwise). It can then be argued that the fact that B will be compensated monetarily for the risk he is about to take partially detracts the element of self-sacrifice, which is central to the virtue of courage. It follows that A, by donating, is more courageous than B on this account.

Being open-handed involves attempting to share your good fortune with those in need. Now, perhaps having two working kidneys might not be considered
affluence under normal circumstances, but when contrasted with a dialysis patient, it just might. Irrespectively, it is clear that giving something away out of the goodness of your heart, not seeking any reward, would objectively qualify as (more) generous than selling that same thing. When applying this to the example above, it is clear that A displays an open-handed behavior whereas B, by requiring compensation, does not.

The second possible reply to the question “How do we know if it is more virtuous to donate than to sell?” is whether or not donating rather than selling will make us more admirable human beings.

To make the problem clearer we can imagine the following, somewhat Singeresque, situation. On my way home from the office, I walk by a pond where a man is drowning. Standing on the shore, I can hear his shrill, panic-stricken cries for help. As he disappears under the water for the second time, I suddenly remember that I have a lifebuoy in my backpack and, as luck has it, I will not have any personal use for it on this particular evening. As I unpack the lifebuoy I have two options. I can either (A) take advantage of the man’s desperate situation and tell him that I will throw him the buoy if he promises to pay me the equivalent of his monthly salary or (B) I can save his life for free. Presumably there is not much doubt as to what a virtuous person would do in this situation. To help others unselfishly without expecting a reward is surely the virtuous thing to do, and, as outlined above, indeed, what an admirable person would have done.

Virtue ethics claims that the virtuousness of the act is not decided by the consequences, yet option A above might seem more morally appealing if I were to use the money for charity rather than splurging on a new handbag. Let us revisit the example. The setting is the same, only this time the man in the water is a very wealthy but extremely stingy person and I am the local Red Cross representative who has spent the past decade trying to persuade him to part with if only a small fraction of his wealth, but to no avail. As I unpack my lifebuoy, I have two options. I can either (A) throw him the buoy on the condition that he donate a substantial part of his wealth to the Red Cross or some other aid foundation or (B) save his life for free. It appears relatively uncontroversial to say that engaging in charity, the giving of a part of one’s wealth to those who are less fortunate, is a virtuous thing to do. But in the example above this admirable act is preceded by blackmail. It hardly seems admirable to take advantage of people’s predicaments, to force them to agree to terms that they would not otherwise have accepted because they fear for their lives. We might be sympathetic to the person on the shore, but it seems odd to suggest that we would admire her when she exploits the circumstances. The fact that option A in the second example might have good consequences does not justify the blackmail. The good, the virtuous in this sense, ought to be chosen for its own sake, not for what it might lead to. Again, the virtues are not to be understood as instrumental. Virtuous actions do not cause fulfillment in the sense that an appropriate medicine might cause health. Living the fulfilled life is the carrying out of fine and noble acts. The focus is on the virtuous character, not the right action, and it is hardly conceivable that a person of virtuous character would engage in blackmail with someone who fears for his/her life. This does not seem to be what one ought to do.

In conclusion, a case can be made that donating rather than selling can bring us closer to a state of flourishing and that we act in accordance with several,
and do not seem to violate any, of the central virtues when we refrain from monetary compensation in these instances.

Promoting Virtuous Behavior

Although the accusation that virtue ethics is not action guiding might well pose a substantial challenge to the theory as such, this critique does not seem to strike at the heart of the idea put forward in this paper, namely, that all virtuous people given the choice would donate rather than sell their organs to those in need. In fact, this appears to be an instance where we can turn to virtue ethics for advice and guidance.

Virtue ethics does not, at least not in its modern form, easily lend itself to clear-cut theories for social organization. To fully investigate the debate surrounding the issue at hand is well beyond the scope of this paper. In the following section, I only attempt to sketch what seems to me a possible line of argument.

It does not necessarily follow from the belief that people ought to be virtuous that society should facilitate or encourage such behavior. According to Aristotle, however, there is such a connection. “It is evident that the best politeia is that arrangement according to which anyone whatsoever might do best and live a flourishing life.”22 In modern times we have, on the other hand, witnessed a call for the neutral society partly as a result of liberal political ideas gaining popularity. It is argued that to open up for individual choices what is seen as state coercion has to be kept to a minimum, a conviction that does not sit well with the Aristotelian priority of the good.23 That said, there are contemporary proponents of virtue ethics as an appropriate theory for social construction. One of these is William Galston, who advocates not only the compatibility of liberalism and virtue theory but also that “liberalism needs an account of goods and virtues that enables it to oppose the extremes of both unfettered individual choice and unchecked state coercion” (pp. 258–59).24 Further to this point he argues: “Sustaining these institutions [of the liberal society] and practices, in turn, requires of liberal citizens specific excellences and character traits: the liberal virtues. These virtues are by no means natural or innate. Liberal communities must, then, be especially attentive to the processes, formal and informal, by which these virtues are strengthened or eroded” (pp. 18–19).25

A way of linking virtue ethics to social organization is to shift the focus to rights; an example would be Rosalind Hursthouse’s argument26 that the construction of the just society (to be understood as the properly functioning society) is prior to rights—that ethics is prior to politics. Hence, the starting point should be eudaemonia and the rights (as codified, e.g., in laws) in the just society should be those rights that allow the members of that society to achieve a state of eudaemonia. Taking the cue from G. E. M. Anscombe’s papers on rights, promises, and justice, Hursthouse champions a eudaemonia-based account of rights and the just society, thus rejecting the priority of the right in favor of that of the good. Anscombe calls rights “naturally unintelligible,” because “a right is not a natural phenomenon that can be discerned and named as a feature found in some class of creatures by, say, a taxonomist” (p. 138).27 Pushing for an analytical understanding of what a right is, Anscombe uses a certain set of stopping modals, that is, ‘a set of ‘you cannots’ which surrounds,
fixes and protects a ‘can’ on the part of the one who is thereby said to have a right.” 28 These stopping modals work as linguistic instruments designed to teach us how to react in different situations and to follow rules. One of Anscombe’s own examples is when a child is told that it cannot do x, for example, not cheat when playing a board game, although it is obvious to the child that she/he is perfectly able to physically do x. In this view all rights, promises, rules, and so forth are prescriptive in the sense that they are based on custom and, as a result, they are naturally unintelligible.

Hursthouse takes the idea one step further and writes, “The logically prior concept is that of a properly functioning society; justice is then specified as the virtue or excellence of such a society, and the laws of justice as those which are in place in such a society; and rights come last, as those things which such laws establish as mine and thine (and ours and theirs). This is the point of saying that a right is ‘naturally unintelligible’; it is intelligible (only) via the concept of a law or convention (nomos)” (p. 235). 29

The above is in no way seeking to give an exhaustive account of whether society ought to be organized in such a way that it promotes, or encourages, virtuous behavior. However, I hope to have made the point that there are sensible ways to construct a eudaemonia-based view of social organization. In such a social organization, the laws should be such that they promote donation rather than the selling of organs for transplantation.

Conclusion

One way of answering the question of why we are encouraged to donate that which we are not allowed to sell is to adopt a virtue ethics approach. In this paper I have attempted to show that virtue ethics can provide a strong support for keeping organ commodification at the gates. I propose that virtue ethics can be action guiding in the sense that it is clear what decision virtuous persons, admirable persons, would reach when facing the choice between donating their organs for free or giving them up conditioned on a price. Further to that point, I have also concluded that donating organs will bring us closer to a state of Aristotelian flourishing because it means that we act in accordance with several of the central virtues when we refrain from monetary compensation in these instances.

It is worth pointing out that this argument does not collapse virtue ethics into some form of duty- or rule-based ethic. Admittedly, such ethical theories might well yield the same result (in most realistic situations) but not on the same grounds. 30 Virtue ethics rejects commodification of organs because it fails to make us flourish, not because it has bad consequences or breaks some rule. The theory is able to help us in these situations partly because it does not focus on the consequences but rather on the character of the decisionmaker. The root of the problem today, according to the virtue ethics approach, is that people are not virtuous enough. The current, dire situation would not improve (ethically speaking; whether it would, in fact, free up more organs is a purely empirical matter) in the least if we were to create a market for organs because a virtuous person would not sell her/his organs anyway. Virtuous persons would not sell their organs but rather donate them because they wish to help their less fortunate fellow man, they “see” that this is fine, noble, and worthwhile. The fact that this is not the current practice in society today only shows that people
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in general are not virtuous. The way to redeem the problems of organ shortage in a given society is not to create a market but rather to increase the sense of virtue.

Notes

1. There is an important distinction to be made between people who give up their organs while still alive and those who give up their organs posthumously. Naturally monetary compensation can be given to both groups; one could, for example, imagine a sort of reversed insurance system where I, on agreeing to the harvesting of certain organs after my death, collect some form of compensation today (monetary or otherwise). This paper, however, will focus on living individuals.

2. Another example might be the Lutheran opinion of letters of indulgences; it appears that on this view, forgiveness is something that can, and should, be given but never sold.

3. The following argument refers to the situation in an industrialized country, leaving open what further complications might arise in developing countries.


9. People’s emotional aversions should not be granted the status of an argument as such (pro or con) but rather as an incentive, a motive, for looking for alternatives to the predominant consequentialist arguments. Hence, even if people were to feel differently, the virtuous thing to do would still be to refrain from selling one’s organs.


14. A problem with the Aristotelian definition is that the difference between a virtue and a vice is not obvious. This distinction was further spelled out by Pincoffs, who suggested that a virtue is a trait of character, manifested in habitual action, that is good for a person to have. Pincoffs EL. *Quandaries and Virtues: Against Reductionism in Ethics*. Lawrence: University Press of Kansas; 1986:78.

15. This could be contrasted with, for example, Nietzsche’s views.


20. Again, this should not be interpreted as saying that the consequences of an action are of no matter to the virtue ethicist.

21. A possible exception could be if the purpose of forcing the person in the predicament to make a promise is to make him/her refrain from committing a heinous deed that we know for sure she/he would otherwise commit.
29. See note 26, Hursthouse, at p. 235.
30. See note 3.